TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~155~~ 10.

SEABOARD AIR LINE RAILWAY, PLAINTIFF IN ERROR,

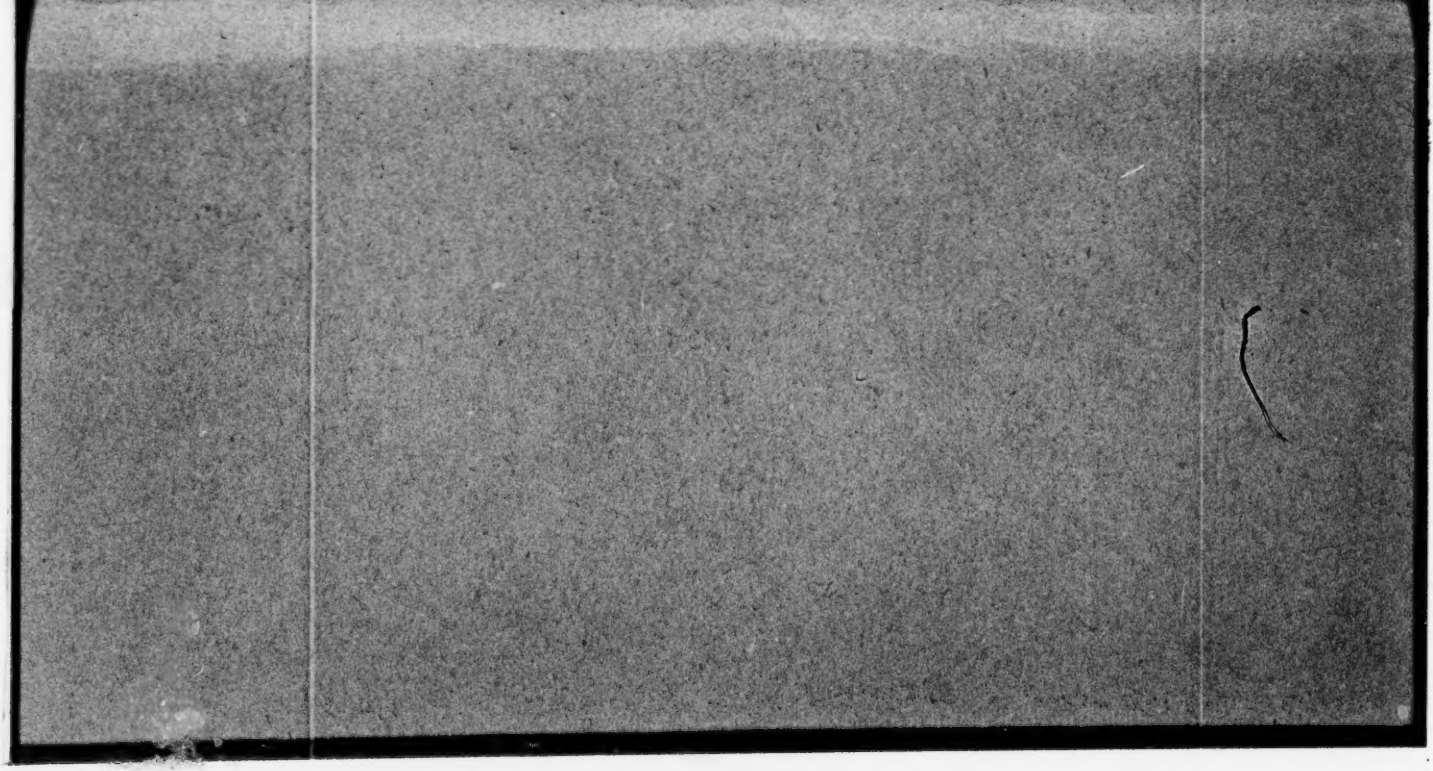
vs.

THE STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY GENERAL OF SAID STATE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED JANUARY 6, 1905.

(19,591)



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1-10 THE STATE OF FLORIDA:

In the Supreme Court.

Be it remembered that heretofore, to-wit: on the 26th day of January, A. D. 1904, the same being a day within the January term of the supreme court of the State of Florida, the State of Florida *ex rel.* the railroad commissioners of the State of Florida, J. B. Whitfield as attorney general of said State, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, by its attorneys filed in the office of the clerk of the supreme court of the State of Florida its petition for an alternative writ of mandamus, which said petition is in the words and figures following, to-wit:

* * * * * * *

11 And afterwards, to-wit: on the 26th day of January, A. D. 1904, the plaintiff filed its motion for an alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, J. B. Whitfield, as Attorney General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
THE SEABOARD AIR LINE, a Corporation under the Laws of the States of Virginia and North Carolina.

Come now the relators and present to the court a petition, and move the court that an alternative writ of mandamus do issue as prayed in said petition returnable as the court may direct.

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA,
J. B. WHITFIELD, Attorney General,
J. M. BARRS, Special Counsel,
By J. B. WHITFIELD, Attorney General.

And on the same day, to-wit: the 26th day of January, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

12 Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
THE SEABOARD AIR LINE RAILWAY, Respondent.

This cause is this day submitted to the court upon motion and petition for an alternative writ of mandamus against the respondent

herein, but the court not being advised of its judgment in the premises time is taken to consider thereof.

And afterwards, to-wit: on the 2nd day of February, A. D. 1904, the supreme court made an order that the alternative writ of mandamus issue, which order is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
THE SEABOARD AIR LINE RAILWAY, Defendant.

Upon consideration of the motion and petition herein it is ordered that an alternative writ of mandamus do issue herein directed to the respondent, returnable on Tuesday, the 16th instant, in conformity to the said motion and petition filed.

13 And afterwards, to-wit: on the 10th day of February, A. D. 1904, an alternative writ of mandamus was filed in the cause, which writ is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, J. B. Whitfield, as Attorney General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina.

The State of Florida to the Seaboard Air Line railway:

Whereas, by a petition caused by the railroad commissioners of the State of Florida to be filed in this court in the name of the State of Florida, by the railroad commissioners of the State of Florida, J. B. Whitfield as attorney general of the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, it has been made to appear:—

1. That the Florida West Shore railway is a railroad company, a corporation of the State of Florida, and has constructed its line of railway from a point about four miles southwest of Turkey Creek, a station on the main line of the Florida Central and Peninsular railroad, which railroad is now known as the Seaboard Air Line railway, at which point the said line of railway of

14

the Florida West Shore railway connects with a branch of the said Florida Central and Peninsular railroad, known as the "Turkey Creek branch," and runs in a southwesterly direction to the town of Sarasota, in Manatee county, Florida, with branch lines to Terra Ceia, Lemon and Palmetto, and that all of the said main line and branch lines of said Florida West Shore railway are within the State of Florida.

2. That the Seaboard Air Line railway is a corporation of the States of Virginia and North Carolina, and now controls and operates, and since the 1st day of June, 1903, has controlled and operated the said Florida Central and Peninsular railroad, known as the Seaboard Air Line railway, and owns, controls and operates, or controls and operates divers other lines of railroad in the State of Florida.

3. That the said Seaboard Air Line railway and the Florida West Shore railway entered into a contract with each other on the 1st day of June, A. D. 1903, in which it was agreed by them as follows:

"This agreement made and executed on this the first day of June, A. D. nineteen hundred and three (1903) between the Seaboard Air Line railway, a corporation of the States of Virginia and North Carolina, hereinafter called the "Seaboard," party of the first part, and the Florida West Shore railway, a corporation of the State of Florida, hereinafter called the "West Shore," party of the second part:

"Whereas, the West Shore has constructed its line of railway from a point about four (4) miles southwest of Turkey Creek, a station on the main line of the Florida Central & Peninsular railroad, (which latter railroad is controlled and operated by the Seaboard Air Line railway), at which point the said line of railway of the West Shore connects with the Turkey Creek branch of the said Florida Central & Peninsular railroad, and runs in a southwesterly direction to the town of Sarasota, in Manatee county, Florida, with the branch lines to Terra Ceia, Lemon and Palmetto; and

"Whereas, the West Shore contemplates the extension of said line of railway from Sarasota southwardly to a point at or near Charlotte Harbor in De Soto county, Florida, and

"Whereas, the West Shore has no equipment, rolling stock or motive power and is unable to operate its said line or railway without the acquisition of the same; and

"Whereas, the Seaboard desires to derive the benefit from the opening up and development of the territory through which the railway of the West Shore runs; and

"Whereas, it is deemed to be to the mutual interest and advantage of the stockholders of the Seaboard and the West Shore that the railway of the West Shore should be operated in connection with the Seaboard:

"Now, then, in consideration of the premises, and of the advantages and benefits to be derived by each of the said parties from the contracts of the other, it is hereby mutually covenanted and contracted as follows:

"First. The Seaboard agrees to furnish the West Shore railway with the necessary equipment for the operation of its line of railway and agrees to cause the same to be operated by its officers and agents for the benefit of the stockholders of the West Shore.

"Second. The term "equipment" shall embrace engines and coaches, freight and passenger, switch engines or construction trains and rolling stock of every kind and description, necessary in the operation of the railroad, together with all tools, implements and other accessories incident thereto.

"Third. The West Shore shall pay for the use of said equipment the same rentals which the Seaboard now charges its ancil-
16 lary lines for the use of similar equipment, it being understood that if at any time either party shall become dissatisfied with the rate of rental so charged, such party shall have the right to call for a re-adjustment of said rate and if such re-adjustment can not be had by agreement, then the question of rentals shall be submitted to arbitrators to be selected as hereinafter provided, who, after investigation of the matter, shall decide whether or not in equity and justice there ought to be any change in the rate of rental, and if so, fix a rate which, in their judgment, would be fair and equitable to all concerned, and the decision of the arbitrators in the premises shall be conclusive upon both parties hereto.

"Fourth. The West Shore agrees that it will bear such proportion of the salaries of the officers of the operating and traffic departments of the fifth division of the Seaboard as the mileage of the West Shore bears to the mileage of the said division, which said proportion is hereby fixed at the sum of three hundred and fifty dollars ($350) per annum.

"Fifth. It is understood and agreed that the compensation for the use of equipment hereinbefore provided, and the proportion of salaries to be paid by the West Shore shall be considered as part of the operating expenses of the railway of the West Shore.

"Sixth. It is understood and agreed that the taxes, assessments, insurance, damages to persons or property incurred by reason of the running of cars or through the operation of the railroad, and all other items of expense of every class and description customarily included in the operating expenses of a railroad, shall be considered as part of the operating expenses of the railway of the West Shore.

"Seventh. It is understood and agreed that the sum of one hundred and twenty-five dollars ($125) per month shall be allowed and paid to the West Shore out of the earnings of the railway to
17 be used by it in paying salaries of such of its officers as are not engaged in the direct operation of the company, and in otherwise keeping up the corporate organization of the company, and the said allowance to be considered as a part of the operating expenses of the West Shore.

"Eighth. The Seaboard agrees to guarantee the payment, as the same matures, of both the principal and interest of a series of bonds of the West Shore, known as first mortgage four per cent. (4 %) thirty

year gold bonds, issued and to be issued at the rate of fourteen thousand dollars ($14,000) per mile, of which eleven thousand five hundred dollars ($11,500) per mile shall be used in the payment for the construction of the railway of the West Shore, and the remainder of said bonds, to-wit, twenty-five hundred dollars ($2500) per mile, to remain in the treasury of the company and only to be used for its legitimate corporate purposes, by resolution of the board of directors of the West Shore, sanctioned and approved by resolution of the board of directors of the Seaboard.

"Ninth. It is understood and agreed that in the event the gross earnings derived from the operation of the railway of the West Shore are not sufficient to meet the operating expenses and fixed charges of said railway, as hereinbefore provided, the Seaboard will make good any such deficiency, and the West Shore, in consideration thereof, hereby covenants and agrees that at the expiration of every six (6) months it will execute to the Seaboard its non-interest bearing obligations wherein it will bind itself to pay to the Seaboard any such deficiency for the six (6) months immediately preceding, out of the net earnings of the company, over and above the operating expenses and fixed charges, and the same may hereafter accumulate from time to time, and it is distinctly understood and agreed that no dividends can be declared on the capital stock of the West Shore so long as any of its obligations for deficiency in income, as aforesaid, are outstanding and unpaid.

18 "Tenth. The Seaboard agrees that it will treat the West Shore as a favored connection and give it a fair and equitable proportion of the revenue derived from the interchange of business between the companies.

"Eleventh. It is understood and agreed that the officers and agents of the Seaboard who may be charged with the operation of the line of railway of the West Shore, shall in all matters pertaining to the business of the West Shore be deemed and considered the officers and agents of said company.

"Twelfth. It is understood and agreed that the president and director of the West Shore shall be entitled to annual passes over all lines operated by the Seaboard in the State of Florida, including the line of the West Shore.

"Thirteenth. The Seaboard agrees that it will keep accurate books of account of the revenue of the West Shore and will render monthly to the president of the West Shore an itemized statement of the earnings and expenses of said railway, and it further agrees that it will pay into the treasury of the West Shore on or before the fifteenth day of each month any surplus of earnings of the preceding month, after having deducted cost of operation.

"Fourteenth. In case differences should arise between the parties hereto as to the interpretation and meaning of any clause or phrase of this contract, it is agreed that such differences shall be submitted to a board of arbitrators for adjustment, the Seaboard to select one arbitrator and the West Shore one arbitrator, and the two arbitra-

tors thus chosen to select an umpire; the award of the board of arbitrators shall be final and conclusive upon the parties.

"In witness whereof the parties hereto have caused these presents to be executed by their respective presidents and sealed with their respective coporate seals, duly attested by their respective sec-
19 retaries, the day and year first above written.

SEABOARD AIR LINE RAILWAY,
By J. S. WILLIAMS, President.
Attest: D. C. PORTEOUS, Secretary.
FLORIDA WEST SHORE RAILWAY,
By W. W. MACKALL, President.
Attest: C. L. HELLER, Secretary.

"Executed in the presence of

J. S. HAZLEN,
W. H. A. AUSTIN,
As to W. W. Mackall and C. L. Heller.
E. J. ATWILL.
EDWARD L. DOUGLASS,
Notary Public, Chatham County, Ga.

4. That the said Seaboard Air Line railway has since the 1st day of June, A. D. 1903, controlled and operated, and now controls and operates the said Florida West Shore railway and its branch lines under the said contract of June 1st, A. D. 1903, hereinbefore set out, and the said Florida West Shore railway is now, and since the 1st day of June, A. D. 1903, has been under the management and control of the said Seaboard Air Line railway, and under one and the same management as the Florida Central & Peninsular railroad, alias the Seaboard Air Line railway.

5. That, on the 25th day of June, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, having previously given due notice to the said Seaboard Air Line railway, and after having heard argument in behalf of said company, ordered and adjudged that a certain schedule of freight tariffs should be allowed and adopted for freight shipments from points in Florida to points in Florida, over the Seaboard Air Line railways, to apply to shipments from or destined to points on the Florida West Shore railway, and from points on the Florida West Shore railway to points on the Florida West Shore railway, and that the same should be put into operation and become
20 effective on the 1st day of July, A. D. 1903, notice of which was given to the said Seaboard Air Line railway, and that the said schedule of freight tariffs adopted in and by the said order of the said railroad commissioners is the same as appears in the duly certified copy of said order hereto attached and marked "Exhibit A."

6. That the Seaboard Air Line railway has not yet adopted said

schedule of freight rates, as fixed in said order, and still refuses so to do, but on the contrary thereof charges freight tariffs for freight shipments from points in Florida to points in Florida over the Seaboard Air Line railways from or destined to points on the Florida West Shore railway, and from points on the Florida West Shore railway to points on the Florida West Shore railway, in excess of the rates fixed in and by said order, and in violation of said order, and of chp. 4700 of the Laws of Florida and of rule 1 of rules governing the transportation of freight, duly adopted by the railroad commissioners of Florida, and operative since November 1st, A. D. 1897, which said rule is as follows, to-wit:

"III. Rules Governing the Transportation of Freight.

"Connecting Railroads Under the Same Management.

"1. All connecting railroads which are under the management or control, by lease, ownership or otherwise, of one and the same company, and all connecting roads, the majority of whose stock is owned or controlled directly or indirectly, by one of the connecting lines, shall, for the purpose of transportation, in applying their schedules of freight rates, be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road, unless otherwise specified. The fact that each of said roads has a separate board of directors shall not prevent the application of this rule. Whenever any railroad company owns and operates in connection with its road, and for the purpose of transporting its cars, freight or passengers, any steamer or other water craft, such steamer or water craft shall be deemed a part of its said road."

21 7. And it is further shown that the said railroad commissioners and the people of the State of Florida are entirely without remedy to enforce said order and rule, unless it be afforded by the interposition of this honorable court through a writ of mandamus.

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Seaboard Air Line railway, immediately to put into operation and effect the schedule of freight tariffs adopted in and by said order of the said railroad commissioners, for freight shipments from or destined to points on the Florida West Shore railway and from points on the Florida West Shore railway to points on the Florida West Shore railway over the Seaboard Air Line railway from points in Florida to points in Florida, or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 16th day of February, A. D. 1904, at ten o'clock a. m. of said day and show cause why you refuse to do so, and have you then and there this writ.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and the seal of the said court, at Tallahassee, the capital, this 2nd day of Febraury, A. D. 1904.

[SEAL.] B. B. WILSON,
Clerk Supreme Court, State of Florida.

EXHIBIT "A."

Order No. 25.

Railroad Commission, State of Florida.

22 In the Matter of Freight Rates for the Seaboard Air Line Railway Company to Apply on Shipments to and from Points on the Florida West Shore Railway.

This matter coming on to be heard after due notice to the Seaboard Air Line Railway Company, and the Seaboard Air Line Railway Company being represented by G. P. Raney, Esq., and E. D. Kyle, asst. gen'l frt. agt., and the commission having heard the arguments of G. P. Raney, Esq., and E. D. Kyle, asst. gen'l frt. agt., in behalf of the said Seaboard Air Line Railway Company and the commission being satisfied that the present condition of the freight business of the Florida West Shore railway would justify the ordering into operation of the proposed freight tariff on that line.

It is hereby ordered and adjudged, by the railroad commission of the State of Florida, that the following schedule of freight tariffs shall be allowed and adopted for freight shipments over the Seaboard Air Line railway, to apply only to shipments from or destined to points on the Florida West Shore railway; and from points on the Florida West Shore railway to points on the Florida West Shore railway, and the same shall be put into operation and be effective on the 1st day of July, A. D. 1903.

(Here follows local mileage tariff marked p. 23.)

Distances	Per 100 Lbs.												Per Barrel	Per 100 Lbs.	Per Ton 2,000 Lbs.		Per Carload			Per 100 Lbs.
	1	2	3	4	5	6	A	B	C	D	E	H	F	K	L	M	N	O	P	R
10 Miles and under	20	27	24	20	18	15	11	10	11	9	19	21	16	7	75	1 10	8 00	10 00	5 00	8
20 " " over 10 Miles	34	31	28	23	21	17	15	12	12	10	21	24	18	8	90	1 20	11 00	12 00	7 00	9
30 " " " 20 "	38	35	31	26	24	19	17	14	14	11	23	27	20	9	1 05	1 30	14 00	14 00	8 00	10
40 " " " 30 "	42	38	34	28	26	21	19	15	15	11	25	30	22	10	1 20	1 40	16 00	15 00	9 00	11
50 " " " 40 "	46	41	37	30	28	23	21	16	16	12	27	33	24	10½	1 30	1 50	18 00	16 00	10 00	12
60 " " " 50 "	50	44	40	32	30	25	23	17	17	13	29	36	26	11	1 40	1 60	20 00	17 00	11 00	13
70 " " " 60 "	54	47	43	34	32	27	24	18	18	14	31	39	28	11½	1 50	1 70	22 00	18 00	11 00	14
80 " " " 70 "	58	50	46	36	34	29	25	19	19	15	33	42	30	12	1 60	1 75	24 00	19 00	12 00	15
90 " " " 80 "	62	53	49	38	36	31	26	20	20	15	35	45	31	12½	1 70	1 80	26 00	20 00	13 00	16
100 " " " 90 "	66	56	52	40	38	33	27	21	21	16	37	47	32	13	1 75	1 85	28 00	21 00	14 00	17
110 " " " 100 "	69	59	54	42	40	35	28	22	22	17	39	49	33	13½	1 80	1 90	29 00	22 00	14 00	18
120 " " " 110 "	72	62	56	44	42	37	29	23	23	18	41	50	34	14	1 85	1 95	29 00	23 00	15 00	19
130 " " " 120 "	75	65	58	46	44	39	30	24	24	19	43	51	35	14½	1 90	2 00	31 00	24 00	16 00	20
140 " " " 130 "	78	68	60	48	46	41	31	25	25	19	45	52	36	15	1 95	2 05	32 00	25 00	16 00	21
150 " " " 140 "	80	70	61	50	48	43	32	26	26	20	47	53	37	15½	2 00	2 10	33 00	26 00	17 00	22
160 " " " 150 "	82	72	62	52	49	44	33	27	27	20	48	54	38	16	2 05	2 15	34 00	27 00	17 00	23
170 " " " 160 "	84	74	63	54	50	45	34	28	28	21	49	55	39	16½	2 10	2 20	35 00	28 00	18 00	24
180 " " " 170 "	86	76	64	56	51	46	35	29	29	21	50	56	40	16½	2 15	2 21	36 00	29 00	19 00	24
190 " " " 180 "	88	78	65	58	52	47	36	29	30	22	51	57	41	16½	2 16	2 22	37 00	30 00	19 00	25
200 " " " 190 "	90	80	66	60	53	48	37	30	31	23	52	58	42	16½	2 17	2 23	38 00	30 00	20 00	25
210 " " " 200 "	92	82	67	61	54	49	38	31	32	23	52	60	43	18	2 18	2 24	38 00	31 00	20 00	26
220 " " " 210 "	94	84	68	62	55	50	39	32	33	24	53	61	44	18	2 19	2 25	39 00	31 00	21 00	26
230 " " " 220 "	96	86	69	63	56	51	40	33	34	24	53	62	45	18	2 20	2 26	39 00	31 00	21 00	27
240 " " " 230 "	98	88	70	64	57	52	41	34	35	25	54	63	46	18	2 21	2 27	39 00	32 00	22 00	27
250 " " " 240 "	100	90	71	65	58	53	42	35	36	26	54	64	47	18	2 22	2 28	40 00	32 00	22 00	28
260 " " " 250 "	101	91	72	66	59	54	43	36	37	26	55	65	48	20	2 23	2 29	41 00	32 00	22 00	28
270 " " " 260 "	102	91	73	67	60	55	44	37	38	26	55	66	49	20	2 24	2 30	41 00	33 00	23 00	29
280 " " " 270 "	103	92	74	68	61	56	45	38	39	27	56	67	50	20	2 25	2 31	42 00	33 00	23 00	29
290 " " " 280 "	104	92	75	69	62	57	46	39	40	27	57	68	51	20	2 26	2 32	42 00	33 00	24 00	30
300 " " " 290 "	105	93	76	70	63	58	47	40	41	28	57	69	52	20	2 27	2 33	43 00	34 00	24 00	30
310 " " " 300 "	106	94	77	71	64	59	48	41	42	28	58	70	53	21	2 28	2 34	43 00	34 00	24 00	31
320 " " " 310 "	107	95	78	71	64	59	48	41	42	28	58	71	53	21	2 29	2 35	44 00	34 00	24 00	31
330 " " " 320 "	108	95	78	72	65	60	49	42	43	29	59	72	54	21	2 30	2 36	44 00	35 00	25 00	32
340 " " " 330 "	109	96	79	72	66	60	49	42	43	30	60	73	54	22	2 31	2 37	45 00	35 00	25 00	32
350 " " " 340 "	109	96	79	73	66	61	50	43	44	30	60	74	55	22	2 32	2 38	45 00	35 00	25 00	33
360 " " " 350 "	110	96	80	73	66	61	50	43	44	31	61	75	55	22	2 33	2 39	46 00	35 00	25 00	34
370 " " " 360 "	111	97	80	73	66	61	50	43	44	31	61	76	55	22	2 34	2 40	46 00	35 00	26 00	34
380 " " " 370 "	112	98	81	74	67	62	51	44	45	32	61	77	56	23	2 35	2 43	47 00	36 00	27 00	35
390 " " " 380 "	113	99	82	74	67	62	51	44	45	32	61	78	56	23	2 36	2 46	47 00	36 00	27 00	35
400 " " " 390 "	114	100	83	75	68	62	51	44	45	33	62	79	56	23	2 37	2 50	48 00	36 00	28 00	36

Done and ordered by the Railroad Commissioners of the State of Florida, in session, at their office in the City of Tallahassee, Florida, this 25th day of June, A. D. 1903.

Jeffn. B. Browne,
Chariman.

Attest:

R. C. Dunn,

24 I, Jefferson B. Browne, chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing order is a full, true and correct copy of order No. 25, adopted by the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, on the 25th day of June, A. D. 1903.

JEFF'N B. BROWNE, Chairman.

Dated this 21st day of January, A. D. 1904.
Attest:
R. C. DUNN, Secretary.

This writ came to hand this February 2d, 1904, and in the absence of the president and vice president or the head of the corporation, the Seaboard Air Line railway, and in the absence of the cashier and treasurer and secretary and general manager and any director of said Seaboard Air Line railway, a corporation, this writ was served upon E. D. Raney, a business agent of the said Seaboard Air Line railway, a corporation, by delivering a copy of said writ to the said E. D. Raney who is a resident of Leon county, on February 2d, 1904, in Leon county, Florida.

CHARLES HOPKINS,
Sheriff of Leon County, Florida, and *ex-officio*
Sheriff of the Supreme Court of Florida.

And afterwards, to wit: on the 16th day of February, A. D. 1904, the respondent filed its motion to quash the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

25 THE STATE OF FLORIDA *ex Rel.* THE RAILROAD Commission of the State of Florida *et al.*
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation, etc.
} Mandamus.

Now comes The Seaboard Air Line Railway, a corporation, the defendant, and moves to quash the alternative writ herein on the following grounds:

1st. The rule adopted by the railroad commission of the State of Florida, and set out in said alternative writ as rule 1 of rules governing the transportation of freight—"connecting railroads under the same management"—has no application to a case where one railroad company is operating another railroad, under the circumstances and conditions shown to exist under the agreement of June 1st, 1903, between the defendant and the Florida West Shore railway set out in said writ.

2nd. The said rule 1 is unreasonable, and illegal as a rule, if the meaning and effect of the same is to apply to connecting roads under the same management under the circumstances existing between said defendant and the Florida West Shore railway under said agreement of June 1st, 1903.

3rd. The alternative writ does not state conditions and circumstances entitling relators or the State to the relief sought by such writ.

GEO. P. RANEY,
Attorney for Seaboard Air Line Railway.

And afterwards, to-wit: On the 16th day of February, A. D. 1904, the supreme court made an order that the said motion be set for oral argument on Tuesday, March 1st, proximo, which order is in the words and figures following, to-wit:

26 Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
SEABOARD AIR LINE RAILWAY, Respondent. } No. 1.

The alternative writ herein being made returnable on this day, come now the respondent and files its motion to quash the said writ, and thereupon it is ordered that the said motion be set for oral argument on Tuesday, March 1st proximo.

Mr. Justice Whitfield, being disqualified, took no part in this matter.

And afterwards, to-wit: on the 15th day of March, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } No. 1.

This cause is this day submitted to the court upon briefs by counsel for the respective parties, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 29th day of March, A. D. 1904, the supreme court made an order that the motion to quash be
27 denied, and that defendant be allowed until Tuesday, April 12th, to file a return to said alternative writ, which order is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY, Defendant. } No. 1.

This cause having heretofore been submitted to the court upon briefs by counsel for the respective parties upon the motion of counsel for the defendant to quash the alternative writ of mandamus issued herein, and the same having been considered, and the court being now advised of its judgment in the premises, it is considered, ordered and adjudged by the court that the said motion to quash be and is hereby denied, and the defendant is allowed until Tuesday, April 12th, proximo, to file a return to the said alternative writ.

Whitfield, J., disqualified, took no part in this matter.

And afterwards, to-wit: on the 12th day of April, A. D. 1904, the defendant filed its return to the alternative writ of mandamus, which return is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida *et als.*
vs.
SEABOARD AIR LINE RAILWAY, a Corporation.

28 The Return of The Seaboard Air Line Railway, a Corporation, the Defendant, to the Alternative Writ of Mandamus had in the Above Cause.

The Seaboard Air Line railway, defendant aforesaid, for return to said alternative writ of mandamus says:

I.

That it is true that this defendant, The Seaboard Air Line railway, and the Florida West Shore railway, mentioned in said alternative writ, did on the 1st day of June, A. D. 1903, enter into an agreement of that date set forth in the third paragraph of sub-division of such alternative writ, and that the said Seaboard Air Line railway did control and operate the main and branch lines of said Florida West Shore railway under said contract and agreement for some time thereafter, but afterwards the said Seaboard Air Line railway and the said Florida West Shore railway made and entered into an agreement in place of and as a substitute for said agreement and contract of June 1st, 1903, and afterwards such new and substituted contract was reduced to writing and was executed by the

said Seaboard Air Line railway and said Florida West Shore railway, and defendant, the said Seaboard Air Line railway, annexes hereto as a part of this return and marked Exhibit "A," a copy of said new or substituted agreement, bearing date January 15th, 1904. Defendant further says that since the said Seaboard Air Line railway and said Florida West Shore railway entered into said new or substituted agreement which said new or substituted agreement was made and entered into and also reduced to writing and executed by said parties thereto before the issuing of the alternative writ of mandamus aforesaid, the said Seaboard Air Line railway has not controlled or operated the main and branch lines or any part of said Florida West Shore railway otherwise than under the terms of said agreement of January 15th, 1904, mentioned above.

Defendant further says that it caused to be filed in the office of the railroad commission of the State of Florida at Talla-
29 hassee on the 4th day of February, 1904, a true copy of said new agreement bearing date January 15, 1904.

And defendant further says that the management and operation by the Seaboard Air Line railway of the said Florida West Shore railway and its branch lines under said contract bearing date January 15, 1904, has not constituted and does not constitute the said Seaboard Air Line railway and the said Florida West Shore railway one and the same road under rule 1 of the Florida railroad commission of rules governing the transportation of freight by connecting roads under the same management set out in the alternative writ and requiring that the rates upon such roads shall be computed as upon parts of one and the same road.

II.

And for a further return to said alternative writ of mandamus defendant says:

That it is true that this defendant, The Seaboard Air Line railway, and the Florida West Shore railway mentioned in said alternative writ did on the 1st day of June, A. D 1903, enter into an agreement of that date set forth in the third paragraph or sub-division of such alternative writ, and that the said Seaboard Air Line railway did control and operate the main and branch lines of said Florida West Shore railway under said contract and agreement for some time thereafter, but afterwards the said Seaboard Air Line railway and the said Florida West Shore railway made and entered into a new agreement in place of and as a substitute for said agreement and contract of June 1st, 1903, and afterwards such new and substituted contract was reduced to writing and was executed by the said Seaboard Air Line railway and said Florida West Shore railway, and defendant, the said Seaboard Air Line railway, annexes hereto as a part of this return and marked Exhibit "A" a copy of said new or substituted agreement, bearing date January 15th, 1904. Defend-

ant further says that since the said Seaboard Air Line rail-
30 way and said Florida West Shore railway entered into said new or substituted agreement which said new or substituted agreement was made and entered into and also reduced to writing and executed by said parties thereto before the issuing of the alternative writ of mandamus aforesaid, the said Seaboard Air Line railway has not controlled or operated the main and branch lines or any part of said Florida West Shore railway otherwise than under the terms of said agreement of January 15th, 1904, mentioned above.

Defendant further says that it caused to be filed in the office of the railroad commission of the State of Florida at Tallahassee on the 4th day of February, 1904, a true copy of said new agreement bearing date January 15, 1904.

And defendant further says that the management and operation by the Seaboard Air Line railway of the said Florida West Shore railway and its branch lines under said contract bearing date January 15, 1904, has not constituted and does not constitute the said Seaboard Air Line railway and the said Florida West Shore railway one and the same road under rule 1 of the Florida railroad commission of rules governing the transportation of freight by connecting roads under the same management set out in the alternative writ and requiring that the rates upon such roads shall be computed as upon parts of one and the same road.

And defendant further says that the schedule of freight tariffs adopted by the Florida railroad commission in and by the order of June 25, 1903, and annexed to the alternative writ in this case does not afford and give to the defendant a reasonable and just tariff of rates for freight shipments over the Seaboard Air Line railway from or destined to points on the Florida West Shore railway or from points on the Florida West Shore railway to points on the Florida West Shore railway; and that such tariff of rates with the tariff of passenger rates prescribed by the railroad commis-
31 sion and now in operation over the said Florida West Shore railway and the Seaboard Air Line railway are not sufficient to afford the Seaboard Air Line railway and the Florida West Shore railway a reasonable income from the operation of said roads or in fact any net income from the operation of such roads in the conduct of business local to the State of Florida and not including commerce between the States or foreign commerce over and above the reasonable cost of constructing and maintaining said railroads and paying the fixed charges thereon.

THE SEABOARD AIR LINE RAILROAD.
GEO. P. RANEY, Attorney for Defendant.

STATE OF FLORIDA, }
Duval County. }

Personally appeared D. E. Maxwell and he being duly sworn deposes and says he is the general agent of the Seaboard Air Line

railway, a body corporate and defendant above named, and that he has read the above return and that the facts stated therein are true.

D. E. MAXWELL.

Sworn to and subscribed before me this the 11th day of April, A. D. 1904. Witness my hand and official seal.

[SEAL.] EFFIE C. ELLIS,
Notary Public in and for the State of Florida at Large.

My commission expires Feb. 11, 1908.

This agreement dated the first (1st) day of June, A. D. nineteen hundred and three (1903) between the Seaboard Air Line railway, a corporation of the State of Virginia and North Carolina, hereinafter called the "Seaboard," party of the first part, and the Florida West Shore railway, a corporation of the State of Florida, hereinafter called the "West Shore," party of the second part.

32 Whereas the West Shore has constructed its line of railway from a point about four (4) miles southwest of Turkey Creek, a station on the main line of the Florida Central & Peninsular Railroad (which latter railroad is controlled and operated by the Seaboard Air Line railway) at which point the said line of railway of the West Shore connects with the Turkey Creek branch of the said Florida Central & Peninsular railroad and runs in a southwesterly direction to the town of Sarasota, in Manatee county, Florida, with the branch lines to Terra Ceia, Lemon and Palmetto; and

Whereas the West Shore contemplates the extension of its said line of railway from Sarasota southwardly to a point at or near Charlotte Harbor in De Soto county, Florida; and

Whereas the West Shore has no equipment, rolling stock or motive power and is unable to operate its said line of railway without the acquisition of the same; and

Whereas the Seaboard desires to derive the benefit from the opening up and development of the territory through which the railway of the West Shore runs; and

Whereas it is deemed to be to the mutual interest and advantage of the stockholders of the Seaboard and of the West Shore that the railway of the West Shore should be operated in connection with the Seaboard;

Now then, in consideration of the premises, and of the advantages and benefits to be derived by each of the said parties from the undertakings of the other, it is hereby mutually covenanted and agreed as follows, to-wit:

First. The Seaboard agrees to furnish the West Shore railway with the necessary equipment for the operation of its line of railway and agrees to cause the same to be operated by its officers and agents for the benefit of the stockholders of the West Shore.

33 *Second.* The term "equipment" shall embrace engines and coaches, freight and passenger, switch engines and construction trains and rolling stock of every kind and description, necessary in the operation of the railroad, together with all tools, implements and other accessories incident thereto.

Third. The West Shore shall pay for the use of said equipment the same rentals which the Seaboard now charges its ancillary lines for the use of similar equipment, it being understood that if at any time either party shall become dissatisfied with the rate of rental so charged, such party shall have the right to call for a re-adjustment of said rate and if such re-adjustment can not be had by agreement, then the question of rentals shall be submitted to arbitrators to be selected as hereinafter provided, who, after investigating the matter, shall decide whether or not in equity and justice there ought to be any change in the rate of rental, and if so, fix a rate which, in their judgment, would be fair and equitable to all concerned, and the decision of the arbitrators in the premises shall be conclusive upon both parties hereto.

Fourth. The West Shore agrees that it will bear such proportion of the salaries of the officers of the operating and traffic departments of the sixth division of the Seaboard as the mileage of the West Shore bears to the mileage of said division, which said proportion is hereby fixed at the sum of three hundred and fifty dollars ($350) per annum.

Fifth. It is understood and agreed that the compensation for the use of equipment hereinbefore provided, and the proportion of salaries to be paid by the West Shore shall be considered as part of the operating expenses of the railway of the West Shore.

Sixth. It is understood and agreed that the taxes, assessments, insurance, damages to persons or property incurred by reason of the running of cars or through the operation of the railroad, and all other items of expense of every class and description customarily included in the operating expenses of a railroad, shall be considered as part of the operating expenses of the railway of the West Shore.

34

Seventh. It is understood and agreed that the sum of one hundred and twenty-five dollars ($125.00) per month shall be allowed and paid to the West Shore out of the earnings of the railway to be used by it in paying the salaries of such of its officers as are not engaged in the direct operation of the company and in otherwise keeping up the corporate organization of the company, the said allowance to be considered as a part of the operating expenses of the West Shore.

Eighth. The Seaboard agrees to guarantee the payment, as the same mature, of both the principal and interest of seven hundred and twelve thousand dollars ($712,000) par value of a series of bonds

of the West Shore known as "first mortgage five per cent. (5%) thirty (30) year gold bonds" issued and to be issued at the rate of twelve thousand dollars ($12,000) per mile.

The West Shore agrees that no dividends shall be declared on any of its stock, without the permission of the Seaboard, until January 1, 1909. The West Shore also agrees that it will at all times elect as members of its board of directors two (2) nominees of the Seaboard.

Ninth. The Seaboard agrees that it will treat the West Shore as a favored connection and give it a fair and equitable proportion of the revenue derived from the interchange of business between the companies.

Tenth. It is understood and agreed that the officers and agents of the Seaboard who may be charged with the operation of the line of railway of the West Shore, in all matters pertaining to the business of the West Shore shall be deemed and considered the officers and agents of said company.

Eleventh. It is understood and agreed that the president and directors of the West Shore shall be entitled to annual passes over all lines operated by the Seaboard, including the line of the West Shore.

Twelfth. The seaboard agrees that it will keep accurate books of account of the revenue of the West Shore and will render monthly to the president of the West Shore an itemized statement of the earnings and expenses of said railway, and it further agrees that it will pay into the treasury of the West Shore on or before the fifteenth day of each month any surplus of earnings of the preceding month after having deducted the cost of operation.

Thirteenth. In case differences arise between the parties hereto as to the interpretation and meaning of any clause or phrase of this contract, it is agreed that such differences shall be submitted to a board of arbitrators for adjustment, the Seaboard to select one arbitrator and the West Shore one arbitrator, and the two arbitrators thus chosen to select an umpire, and that the award of such board of arbitrators shall be final and conclusive upon the parties.

Fourteenth. The provisions of this agreement are effective and operative from and after the first day of June, 1903, and shall continue in force during the life of said bonds. Provided, however, that the West Shore shall have the right at any time after January 1st, 1909, by a majority vote of its stockholders, to determine this agreement upon giving six (6) months' notice in writing to the president of the Seaboard of its intention so to do, having first (that is to say, prior to the expiration of said six (6) months either paid off or retired the said issue of bonds, or otherwise relieved the Seaboard from all liability on its guarantee of said bonds, in a manner satisfactory to the counsel of the Seaboard.

In witness whereof the parties hereto have caused these presents to be executed by their respective presidents or vice presidents, this fifteenth (15th) day of January, A. D. 1904.

36 SEABOARD AIR LINE RAILWAY,
[SEAL.] By N. S. MELDRUM, Vice President.

Attest:
D. C. PORTEUS, Secretary.

FLORIDA WEST SHORE RAILWAY,
[SEAL.] By W. W. MACKALL, President.

Attest:
W. I. LYMAN, Secretary.

Signed, and sealed in duplicate originals, in presence of,

As to Seaboard Air Line railway:
J. S. HAZEN,
W. H. A. AUSTIN.

As to Florida West Shore railway:
C. L. HELLER,
J. C. COOPER.

STATE OF FLORIDA,
County of Duval.

I, W. I. Lyman, secretary of the Florida West Shore railway, do hereby certify that the foregoing is a true and correct copy of a certain contract between the Seaboard Air Line railway and the Florida West Shore railway, dated the 15th day of January, A. D. 1904, and executed by the officers of the said companies, and that the original of the said contract is now on file in the office of the secretary of the Florida West Shore railway.

In witness whereof I have hereunto set my hand and the corporate seal of the said Florida West Shore railway, this 15th day of January, A. D. 1904.

(S) W. I. LYMAN.
[SEAL.] FLORIDA WEST SHORE RAILWAY.

37 And afterwards, to-wit: on the 12th day of April, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY, Defendant. } No. 1.

An order having been entered herein on March 29th, ultimo, overruling the motion of the defendant to quash the alternative writ of

mandamus, and allowing the defendant until this date to file its return to such writ, now comes the said defendant, by counsel, and files its return to the said alternative writ.

And afterwards, to-wit: on the 19th day of April, A. D. 1904, the plaintiff filed its motion to quash the return to the alternative writ of mandamus, and for issuance of a peremptory writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General of the State of Florida, and J. M. Barrs, Special Counsel for the Railroad Commissioners of said State,

vs.

SEABOARD AIR LINE RAILWAY.

38 Motion to Quash Return to Alternative Writ of Mandamus and for Issuance of Peremptory Writ of Mandamus.

And now comes the plaintiff in the above entitled cause, by W. H. Ellis its attorney general and J. M. Barrs, special counsel for the railroad commissioners of the State of Florida, and moves the court severally to quash each and every the paragraphs and the allegations contained in each of the divisions of the return of the respondent to the alternative writ of mandamus herein and to issue a peremptory writ of mandamus in accordance with said alternative writ heretofore issued. And for the grounds of its said motion, the plaintiff shows to the court here the following:

1. Said return is frivolous and evasive.
2. Said return is argumentative, and states conclusions of law.
3. The contract entered into by the respondent and the Florida West Shore railway on January 15th, 1904, does not affect the relation maintained by the respondent to the Florida West Shore railway under the contract of June 1st, 1903, between said railroad companies.
4. The respondent has now the same management and control of the lines of railroads of the Florida West Shore railway as it had under and by virtue of the contract of June 1st, 1903.
5. Said return is insufficient to show that under said rule 1, the railroads of the respondent and the Florida West Shore railway should not, for the purposes of transportation, in applying their schedule of freight rates, be considered as constituting but one and the same road.
6. The questions of law raised in said return were presented to the court in the motion of the respondent to quash said alternative writ, and the motion was denied by the court.

39 7. The last paragraph of said return which denies the sufficiency of the rates prescribed by said railroad commissioners does not show that the said rates are unjust or unreasonable, nor are facts therein alleged from which the court could infer that the said rates are unreasonable.

8. Said return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Florida.

And afterwards, to-wit: on the 26th day of April, A. D. 1904, the supreme court made an order that briefs be filed by both parties on or before May 17th, A. D. 1904, and that oral argument be heard on that date, if desired, on the issues made by the return, which order is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, Defendant. } No. 1.

The defendant having filed on April 12th its return to the alternative writ of mandamus, in pursuance of the order heretofore entered, and the plaintiff having filed its motion to quash the
40 said return, it is ordered that briefs by both parties be filed on or before May 17th proximo, and if oral argument is desired it will be heard on that day, on the issues made by the motion to quash the return to the alternative writ.

(Mr. Justice Whitfield, disqualified, took no part in this matter.)

And afterwards, to-wit: on the 17th day of May, A. D. 1904, the defendant filed its notice of motion for leave to file an amendment to the return to the alternative writ of mandamus, which notice is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida, January Term, 1904.

STATE OF FLORIDA *ex Rel.* FLORIDA RAILROAD COMMISSION ET AL.
vs.
SEABOARD AIR LINE RAILWAY.

The plaintiff and its attorneys will please take notice that on Tuesday, May 17th, 1904, at ten o'clock a. m., or as soon thereafter

as counsel can be heard we will move the said court sitting at Tallahassee, Florida, for leave to file a further and additional return of the defendant Seaboard Air Line railway to the alternative writ of mandamus in the above entitled cause, a copy of which is herewith served upon you.

GEO. P. RANEY,
J. C. COOPER,
Attorneys for Seaboard Air Line Railway.

Copy of the foregoing notice and of the further additional return of the Seaboard Air Line railway above referred to received, and service accepted this 14th day of May, 1904.

J. M. BARRS,
Att'y for Pl't'ffs.

41 And on the same day, to-wit: one the 17th day of May, A. D. 1904, the defendant filed its motion for leave to file an amendment to its return to the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.* R. R. COMMISSION ET AL., Pl'f,
vs.
SEABOARD AIR LINE RAILWAY, D'f't. } No. 1.

Now comes the defendant and moves the court for leave to amend the return heretofore filed in this cause by adding a 3rd and additional defense to said return, the same being herewith presented, and a copy thereof having been served on pl'f., with notice of this motion.

GEO. P. RANEY,
J. C. COOPER,
For Motion.

May 17, 1904.

And on the same day, to-wit: May 17th, A. D. 1904, the supreme court made an order that the defendant's motion for leave to file an amendment to its return to the alternative writ of mandamus be granted, and that counsel for the plaintiff be allowed ten days from this date in which to plead to such amended pleading, which order is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

42 Mr. Justice Whitfield, being disqualified in the following case retires from the bench.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, Defendant. } No. 1.

This cause coming on to be heard upon motion of counsel for the defendant for leave to file an amendment to its return to the alternative writ of mandamus herein, and the court being advised of its judgment in the premises, it is ordered that the said motion be and the same is hereby granted, and counsel for the plaintiff are allowed ten days from this date in which to plead to such amended pleading.

And on the same day, to-wit: on the 17th day of May, A. D. 1904, the defendant filed its additional return to the alternative writ of mandamus, which additional return is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION OF the State of Florida *et al.*
vs.
SEABOARD AIR LINE RAILWAY, a Corporation.

The Further and Additional Return of the Seaboard Air Line Railway, a Corporation, the Defendant, to the Alternative Writ of Mandamus in the Above Cause.

43 The Seaboard Air Line railway, defendant aforesaid, for a further and additional return filed by leave of court to said alternative writ of mandamus says:

III.

That it is true that this defendant, The Seaboard Air Line Railway, and the Florida West Shore railway mentioned in said alternative writ did on the 1st day of June, A. D. 1903, enter into an agreement of that date set forth in the third paragraph or sub-division of such alternative writ, and that the said Seaboard Air Line railway did control and operate the main and branch lines of said Florida West Shore railway under said contract and agreement for

some time thereafter, but afterwards the said Seaboard Air Line railway and the said Florida West Shore railway made and entered into a new agreement in place of and as a substitute for said agreement and contract of June 1st, 1903, and afterwards such new and substituted contract was reduced to writing and was executed by the said Seaboard Air Line railway, and said Florida West Shore railway, and defendant, the said Seaboard Air Line Railway, annexes hereto as a part of this return and marked Exhibit "A," a copy of said new or substituted agreement, bearing date January 15th, 1904. Defendant further says that since the said Seaboard Air Line railway and said Florida West Shore railway entered into said new or substituted agreement which said new or substituted agreement was made and entered into and also reduced to writing and executed by said parties thereto before the issuing of the alternative writ of mandamus aforesaid, the said Seaboard Air Line railway has not controlled or operated the main and branch lines or any part of said Florida West Shore railway, otherwise than under the terms of said agreement of January 15th, 1904, mentioned above.

Defendant further says that it caused to be filed in the office of the railroad commission of the State of Florida at Tallahassee on the 4th day of February, 1904, a true copy of said new agreement bearing date January 15, 1904.

44 And defendant further says that the management and operation by the Seaboard Air Line railway of the said Florida West Shore railway, and its branch lines under said contract bearing date January 15, 1904, has not constituted and does not constitute the said Seaboard Air Line railway and the said Florida West Shore railway one and the same road under rule 1 of the Florida railroad commission of rules governing the transportation of freight by connecting roads under the same management set out in the alternative writ and requiring that the rates upon such roads shall be computed as upon parts of one and the same road.

And defendant further says that the schedule of freight tariffs adopted by the Florida railroad commission in and by the order of June 25, 1903, and annexed to the writ in this cause does not afford and give to the defendant a reasonable and just tariff of rates for freight shipments over the Seaboard Air Line railway from or destined to points on the Florida West Shore railway, or from points on the Florida West Shore railway to points on the Florida West Shore railway, and that such tariff of rates with the tariff of passenger rates now in operation over the Florida West Shore railway, and over the Seaboard Air Line railway, are not sufficient to afford the Seaboard Air Line railway and said Florida West Shore railway a reasonable income from the operation of said roads, or in fact any net income from the operation of said railroads in the conduct of business local to the State of Florida, and including the earnings of said railroads in Florida from interstate and

foreign commerce, over and above the reasonable cost of constructing, maintaining and operating said railroad.

G. P. RANEY,
J. C. COOPER,
Attorneys for Defendant.

45 STATE OF VIRGINIA, }
City of Portsmouth. }

Personally appeared before me E. F. Cost, who being duly sworn, deposes and says that he is the 2nd vice president of the Seaboard Air Line railway, a body corporate and defendant above named, and that he has read the above return and that the facts stated therein are true.

E. F. COST,
Second Vice President.

Sworn to and subscribed before me this 11th day of May, 1904.
[SEAL.] JNO. H. BOATWRIGHT,
Notary Public.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

JNO. H. BOATWRIGHT,
Notary Public.

And afterwards, to-wit: on the 26th day of May, A. D. 1904, the plaintiff filed a motion to quash the further and additional return to the alternative writ of mandamus and for issuance of peremptory writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* ATTORNEY GENERAL ET AL. }
vs. }
SEABOARD AIR LINE RAILWAY. }

46 Motion to Quash Further and Additional Return to Alternative Writ and for Issuance of Peremptory Writ of Mandamus.

And now comes the plaintiff in the above entitled cause, by W. H. Ellis, its attorney-general, and J. M. Barrs, special counsel for the railroad commissioners of the State of Florida,—and not waiving or abandoning, but insisting upon and reaffirming, the motion to quash the original return of the respondent to the alternative writ herein and for the issuance of a peremptory writ,—further moves the court to quash each and every the paragraphs and the allegations contained in the further and additional return of the respond-

ent to said alternative writ and designated as division III of said return, and to issue a peremptory writ of mandamus herein. And for the grounds of its said motion, the plaintiff shows to the court here the following:

1. Said further and additional return is frivolous and evasive.

2. Said further and additional return is argumentative, and states conclusions of law.

3. The contract entered into by the respondent and the Florida West Shore railway on January 15th, 1904, does not affect the relation maintained by the respondent to the Florida West Shore railway under the contract of June 1st, 1903, between said railroad companies.

4. The respondent has now the same management and control of the lines of railroad of the Florida West Shore as it had under and by virtue of the contract of June 1st, 1903.

5. Said further and additional return is insufficient to show that under said rule 1, the railroads of the respondent and the Florida West Shore railway should not, for the purpose of transportation, in applying their schedule of freight rates, be considered as constituting but one and the same road.

47 6. The questions of law raised in said further and additional return were presented to the court in the motion of the respondent to quash said alternative writ, and the motion was denied by the court.

7. The last paragraph of said further and additional return which denies the sufficiency of the rates prescribed by said railroad commissioners, does not show that the said rates are unjust or unreasonable, nor are facts therein alleged from which the court could infer that the said rates are unreasonable.

8. Said further and additional return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the Railroad
Commissioners of Florida.

And afterwards, to-wit: on the 19th day of July, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY CO., Defendant. } No. 1.

48 This cause is this day submitted to the court upon oral argument by counsel for the respective parties upon motion of counsel for plaintiff to quash the return to the alternative writ, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit, on the 21st day of July, A. D. 1904, the supreme court of Florida filed with the clerk of said court its opinion in said cause, which opinion is in the words and figures as follows, to-wit:

49 In the Supreme Court of Florida, June Term, A. D. 1904. En Banc.

THE STATE OF FLORIDA *ex Rel.* THE RAILroad Commissioners of the State of Florida, the Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation Under the Laws of Virginia and North Carolina, Defendant. } Mandamus. No. 1.

50 Statement.

On February 2nd, 1904, an alternative writ of mandamus issued from this court alleging: "1. That the Florida West Shore railway is a railroad company, a corporation of the State of Florida, and has constructed its line of railway from a point about four miles southwest of Turkey Creek, a station on the main line of the Florida Central and Peninsular railroad, which railroad is now known as the Seaboard Air Line railway, at which point the said line of railway of the Florida West Shore railway connects with a branch of the said Florida Central and Peninsular railroad, known as the "Turkey Creek branch," and runs in a southwesterly direction to the town of Sarasota, in Manatee county, Florida, with branch lines to Terra Ceia, Lemon and Palmetto, and that all of the said main line and branch lines of said Florida West Shore railway are within the State of Florida.

2. That the Seaboard Air Line railway is a corporation of the States of Virginia and North Carolina, and now controls and operates, and, since the 1st day of June, 1903, has controlled and operated the said Florida Central and Peninsular railroad, known as the Seaboard Air Line railway, and owns, controls and operates, or controls and operates divers other lines of railroad in the State of Florida.

3. That the said Seaboard Air Line railway and the Florida West Shore railway entered into a contract with each other on the 1st day of June, A. D. 1903, in which it was agreed by them as follows, to-wit: 'This agreement made and executed on this the first day of June, A. D. nineteen hundred and three (1903) between the Seaboard Air Line railway, a corporation of the States of Vir-
51 ginia and North Carolina, hereinafter called the 'Seaboard,' party of the first part, and the Florida West Shore railway, a corporation of the State of Florida, hereinafter called the 'West Shore,' party of the second part;

'Whereas, the West Shore has constructed its line of railway from a point about four (4) miles southwest of Turkey Creek, as tation on the main line of the Florida Central & Peninsular railroad (which latter railroad is controlled and operated by the Seaboard Air Line railway), at which point the said line of railway of the West Shore connects with the Turkey Creek branch of the said Florida Central & Peninsular railroad, and runs in a southwesterly direction to the town ef Sarasota, in Manatee county, Florida, with the branch lines to Terra Ceia, Lemon and Palmetto; and

Whereas, the West Shore contemplates the extension of its said line of railway from Sarasota southwardly to a point at or near Charlotte Harbor in De Soto county, Florida, and

Whereas, the West Shore has no equipment, rolling stock or motive power, and is unable to operate its said line of railway without the acquisition of the same; and

Whereas, the Seaboard desires to derive the benefit from the opening up and development of the territory through which the railway of the West Shore runs; and

Whereas, it is deemed to be to the mutual interest and advantage of the stockholders of the Seaboard and of the West Shore that the railway of the West Shore should be operated in connection with the Seaboard:

Now, then, in consideration of the premises, and of the advantages and benefits to be derived by each of the said parties from the contracts of the other, it is hereby mutually covenanted and contracted as follows:

52 First. The Seaboard agrees to furnish the West Shore railway with the necessary equipment for the operation of its line of railway and agrees to cause the same to be operated by its officers and agents for the benefit of the stockholders of the West Shore.

Second. The term 'equipment' shall embrace engines and coaches,

freight and passenger, switch engines or construction trains and rolling stock of every kind and description, necessary in the operation of the railroad, together with all tools, implements and other accessories incident thereto.

Third. The West Shore shall pay for the use of said equipment the same rentals which the Seaboard now charges its ancillary lines for the use of similar equipment, it being understood that if at any time either party shall become dissatisfied with the rate of rental so charged, such party shall have the right to call for a re-adjustment of said rates and if such re-adjustment can not be had by agreement, then the question of rentals shall be submitted to arbitrators to be selected as hereinafter provided, who, after investigation of the matter, shall decide whether or not in equity and justice there ought to be any change in the rate of rental, and if so, fix a rate which, in their judgment, would be fair and equitable to all concerned, and the decision of the arbitrators in the premises shall be conclusive upon both parties hereto.

Fourth. The West Shore agrees that it will bear such proportion of the salaries of the officers of the operating and traffic departments of the fifth division of the Seaboard as the mileage of the West Shore bears to the mileage of the said division, which said proportion is hereby fixed at the sum of three hundred and fifty dollars ($350) per annum.

53 Fifth. It is understood and agreed that the compensation for the use of equipment hereinbefore provided, and the proportion of salaries to be paid by the West Shore shall be considered as part of the operating expenses of the railway of the West Shore.

Sixth. It is understood and agreed that the taxes, assessments, insurance, damages to persons or property incurred by reason of the running of cars or through the operation of the railroad, and all other items of expense of every class and description customarily included in the operating expenses of a railroad, shall be considered as part of the operating expenses of the railway of the West Shore.

Seventh. It is understood and agreed that the sum of one hundred and twenty-five dollars ($125) per month shall be allowed and paid to the West Shore out of the earnings of the railway to be used by it in paying the salaries of such of its officers as are not engaged in the direct operation of the company, and in otherwise keeping up the corporate organization of the company, and the said allowance to be considered as a part of the operating expenses of the West Shore.

Eighth. The Seaboard agrees to guarantee the payment, as the same matures, of both the principal and interest of a series of bonds of the West Shore, known as first mortgage four per cent. (4%), thirty year gold bonds, issued and to be issued at the rate of fourteen thousand dollars ($14,000) per mile, of which eleven thousand five hundred dollars ($11,500) per mile shall be used in payment for the construction of the railway of the West Shore, and the remainder of said bonds, to-wit: twenty-five hundred dollars ($2,500) per mile to

remain in the treasury of the company and only to be used for its legitimate corporate purposes, by resolution of the board of directors of the West Shore, sanctioned and approved by resolutions of the board of directors of the Seaboard.

54 Ninth. It is understood and agreed that in the event the gross earnings derived from the operation of the railway of the West Shore are not sufficient to meet the operating expenses and fixed charges of said railway, as hereinbefore provided, the Seaboard will make good any such deficiency, and the West Shore, in consideration thereof, hereby covenants and agrees that at the expiration of every six (6) months it will execute to the Seaboard its non-interest bearing obligations wherein it will bind itself to pay to the Seaboard any such deficiency for the six (6) months immediately preceding, out of the net earnings of the company, over and above the operating expenses and fixed charges, and the same may hereafter accumulate from time to time, and it is distinctly understood and agreed that no dividends can be declared on the capital stock of the West Shore so long as any of its obligations for deficiency in income, as aforesaid, are outstanding and unpaid.

Tenth. The Seaboard agrees that it will treat the West Shore as a favored connection and give it a fair and equitable proportion of the revenue derived from the interchange of business between the companies.

Eleventh. It is understood and agreed that the officers and agents of the Seaboard who may be charged with the operation of the line of railway of the West Shore, shall in all matters pertaining to the business of the West Shore, be deemed and considered the officers and agents of said company.

Twelfth. It is understood and agreed that the president and directors of the West Shore shall be entitled to annual passes over all lines operated by the Seaboard in the State of Florida, including the line of the West Shore.

Thirteenth. The Seaboard agrees that it will keep accurate books of account of the revenue of the West Shore and will render

55 monthly to the president of the West Shore an itemized statement of the earnings and expenses of said railway, and it further agrees that it will pay into the treasury of the West Shore on or before the fifteenth day of each month any surplus of earnings of the preceding month, after having deducted cost of operation.

Fourteenth. In case differences should arise between the parties hereto as to the interpretation and meaning of any clause or phrase of this contract, it is agreed that such differences shall be submitted to a board of arbitrators for adjustment, the Seaboard to select one arbitrator and the West Shore one arbitrator, and the two arbitrators thus chosen to select an umpire; the award of the board of arbitrators shall be final and conclusive upon the parties.

In witness whereof, the parties hereto have caused these presents to be executed by their respective presidents, and sealed with their

respective corporate seals, duly attested by their respective secretaries, the day and year first above written.

4. That the said Seaboard Air Line railway has since the 1st day of June, A. D. 1903, controlled and operated, and now controls and operates the said Florida West Shore railway and its branch lines under the said contract of June 1st, A. D. 1903, hereinbefore set out, and the said Florida West Shore railway is now, and since the 1st day of June, A. D. 1903, has been under the management and control of the said Seaboard Air Line railway, and under one and the same management as the Florida Central & Peninsular railroad, *alias* the Seaboard Air Line railway.

5. That, on the 25th day of June, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, having previously given due notice to the
56 said Seaboard Air Line railway, and after having heard argument in behalf of said company, ordered and adjudged that a certain schedule of freight tariffs should be allowed and adopted for freight shipments from points in Florida to points in Florida over the Seaboard Air Line railway, to apply to shipments from or destined to points on the Florida West Shore railway, and from points on the Florida West Shore railway to points on the Florida West Shore railway, and that the same should be put into operation and become effective on the 1st day of July, A. D. 1903, notice of which was given to the said Seaboard Air Line railway, and that the said schedule of freight tariffs adopted in and by the said order of the said railroad commissioners is the same as appears in the duly certified copy of said order hereto attached and marked 'Exhibit A.'

6. That the Seaboard Air Line railway has not yet adopted said schedule of freight rates, as fixed in said order, and still refuses so to do, but on the contrary thereof charges freight tariffs for freight shipments from points in Florida to points in Florida over the Seaboard Air Line railway from or destined to points on the Florida West Shore railway and from points on the Florida West Shore railway to points on the Florida West Shore railway, in excess of the rates fixed in and by said order, and in violation of said order, and of chap. 4700 of the Laws of Florida, and of rule 1 of rules governing the transportation of freight, duly adopted by the railroad commissioners of Florida, and operative since November 1st, A. D. 1897, which said rule is as follows, to wit:

'III. Rules Governing the Transportation of Freight—Connecting Railroads Under the Same Management.

1. All connecting railroads which are under the management or control, by lease, ownership or otherwise, of one and the same company, and all connecting roads, the majority of whose stock
57 is owned or controlled, either directly or indirectly, by one of the connecting lines shall, for the purpose of transportation

in applying their schedules of freight rates, be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road, unless otherwise specified. The fact that each of said roads has a separate board of directors shall not prevent the application of this rule. Whenever any railroad company owns and operates in connection with its road, and for the purpose of transporting its cars, freight or passengers, any steamer or other water craft, such steamer or water craft shall be deemed a part of its said road."

The writ commanded defendant immediately to put into operation and effect the schedule of freight tariffs adopted in and by said order of the railroad commissioners, or show cause on February 16, why it refuses to do so. The order of the commissioners made a part of the writ, is as follows, omitting the schedule therein referred to:

"Order No. 25.

Railroad Commission, State of Florida.

In the Matter of Freight Rates for the Seaboard Air Line Railway Company to Apply on Shipments to and from Points on the Florida West Shore Railway.

This matter coming on to be heard after due notice to the Seaboard Air Line Railway Company, and the Seaboard Air Line Railway Company being represented by G. P. Raney, Esq., and E. D. Kyle, ass't gen'l fr't ag't, and the commission having heard the arguments of G. P. Raney, Esq., and E. D. Kyle, ass't gen'l fr't ag't, in behalf of the said Seaboard Air Line Railway Company, and the commissioners being satisfied that the present condition of the freight business of the Florida West Shore railway would justify the ordering into operation of the proposed freight tariff on that line,

58 It is hereby ordered and adjudged by the railroad commission of the State of Florida, that the following schedule of freight tariffs shall be allowed and adopted for freight shipments over the Seaboard Air Line railway, to apply only to shipments from or destined to points on the Florida West Shore railway; and from points on the Florida West Shore railway to points on the Florida West Shore railway, and the same shall be put into operation and be effective on the 1st day of July, A. D. 1903."

The defendant moved to quash the alternative writ, and the motion was denied March 29, 1904, without a written opinion being filed. The return of the defendant, filed April 12, 1904, admits that it entered into the agreement of June 1, 1903, with the Florida West Shore railway, and that it did control and operate the main and branch lines of the latter road under said contract for some time thereafter, but that afterwards the two companies entered into a new agreement in place of and as a substitute for said agreement and

contract of June 1st, 1903, and afterwards the new contract was reduced to writing and executed by the two companies, and that since the new agreement was entered into, which was before the alternative writ issued, the defendant had not controlled or operated the main and branch lines or any part of the Florida West Shore railway, otherwise than under the terms of the new or substituted agreement, which was filed with the railroad commissioners on February 4th, 1904; that the management and operation by the defendant of the Florida West Shore railway and its branch lines under said new or substituted contract, does not constitute the two railways one and the same road under rule 1 of the railroad commission set out in the alternative writ which requires that rates upon such roads shall be computed as upon parts of one and the same road. The return further alleges "that the schedule of freight tariffs adopted by the Florida railroad commission in and by the order of June 25, 1903, and annexed to the alternative
59 writ in this case, does not afford and give to the defendant a reasonable and just tariff of rates for freight shipments over the Seaboard Air Line railway from or destined to points on the Florida West Shore railway or from points on the Florida West Shore railway to points on the Florida West Shore railway, and that such tariff of rates with the tariff of passenger rates prescribed by the railroad commission and now in operation over the said Florida West Shore railway and the Seaboard Air Line railway are not sufficient to afford the Seaboard Air Line railway and the Florida West Shore railway a reasonable income from the operation of said roads or in fact any net income from the operation of such roads in the conduct of business local to the State of Florida, and not including commerce between the States or foreign commerce over and above the reasonable cost of constructing and maintaining said railroads and paying the fixed charges thereon.

The new or substituted contract attached to and made a part of the return is substantially in the language of the contract of June 1, 1903, except in the following particulars: The ninth paragraph of the first contract is omitted from the second, the eighth was changed so as to read as follows:

"*Eighth.* The Seaboard agrees to guarantee the payment, as the same mature of both the principal and interest of seven hundred and twelve thousand dollars ($712,000) par value of a series of bonds of the West Shore, known as 'first mortgage five per cent. (5%) thirty (30) year gold bonds,' issued and to be issued at the rate of twelve thousand dollars ($12.000) per mile.

The West Shore agrees that no dividends shall be declared on any of its stock, without the permission of the Seaboard, until January
1, 1909. The West Shore also agrees that it will at all times
60 elect as members of its board of directors two (2) nominees of the Seaboard."

The new contract provides for annual passes for the president and directors of the West Shore "over all lines operated by the Seaboard

including the line of the West Shore," instead of confining the passes to lines operated by the Seaboard in Florida as in the first contract.

A new paragraph was added to the substituted agreement as follows:

"*Fourteenth.* The provisions of this agreement are effective and operative from and after the first day of June, 1903, and shall continue in force during the life of said bonds: Provided, however, that the West Shore shall have the right at any time after January 1st, 1909, by a majority vote of its stockholders, to determine this agreement upon giving six (6) months' notice in writing to the president of the Seaboard of its intention so to do, having first (that is to say, prior to the expiration of said six (6) months, either paid off or retired the said issue of bonds, or otherwise relieved the Seaboard from all liability on its guarantee of said bonds, in a manner satisfactory to the counsel of the Seaboard."

On May 17th, 1904, the defendant filed by leave of this court, a further and additional return, which sets up the new or substituted agreement and claims that the operation and management of the West Shore under the new agreement does not constitute the two roads one and the same road under rule 1 of the railroad commissioners so as to require that rates upon such roads shall be computed as upon parts of one and the same road, substantially as the same matters were set up in the former return, and in addition the return alleges "that the schedule of freight tariffs adopted by the Florida railroad commission in and by the order of June
61 25, 1903, and annexed to the writ in this cause does not afford and give to the defendant a reasonable and just tariff of rates for freight shipments over the Seaboard Air Line railway from or destined to points on the Florida West Shore railway, or from points on the Florida West Shore railway to points on the Florida West Shore railway, and that such tariff of rates with the tariff of passenger rates now in operation over the Florida West Shore railway and over the Seaboard Air Line railway are not sufficient to afford the Seaboard Air Line railway and said Florida West Shore railway a reasonable income from the operation of said railroads in the conduct of business local to the State of Florida and including the earnings of said railroad in Florida from interstate and foreign commerce over and above the reasonable cost of constructing, maintaining and operating said railroad."

The plaintiff now moves to quash the returns and for a peremptory writ upon the following grounds: 1. Said returns are frivolous and evasive.

2. Said returns are argumentative, and state conclusions of law.

3. The contract entered into by the respondent and the Florida West Shore railway on January 15th, 1904, does not affect the relation maintained by the respondent to the Florida West Shore railway under the contract of June 1st, 1903, between said railroad companies.

4. The respondent has now the same management and control of

the lines of railroad of the Florida West Shore as it had under and by virtue of the contract of June 1st, 1903.

5. Said returns are insufficient to show that under said rule 1, the railroads of the respondent and the Florida West Shore railway should not, for the purpose of transportation, in applying their schedule of freight rates, be considered as constituting but one and the same road.

62 6. The questions of law raised in said returns were presented to the court in the motion of the respondent to quash said alternative writ, and the motion was denied by the court.

7. The last paragraph of said returns which deny the sufficiency of the rates prescribed by said railroad commissioners does not show that the said rates are unjust or unreasonable, nor are facts therein alleged from which the court could infer that the said rates are unreasonable.

8. Said returns do not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable it to pass judgment upon the sufficiency of the returns.

63 CARTER, *J.* (*after stating the facts.*)

Sections 3 and 4, chapter 4700, act of 1899 (the railroad commission law), prohibit any railroad, railroad company or common carrier from charging, collecting, demanding or receiving more than a fair or reasonable rate of toll or compensation for the transportation of passengers or freight, and from making unjust discrimination in its rates or charges of toll or compensation for transporting passengers or freight "upon its tracks or any of the branches thereof or upon any railroad within this State which it has the right, license, or permission to use, operate or control." Section 5 defines the term "railroad" as used in the act as including among other things, "all the road in use by any corporation, receiver, trustee or any other person operating a railroad whether operated under any contract, agreement, lease or otherwise." By section 6 the railroad commissioners are given power to "make reasonable and just rates of freight and passenger tariffs to be observed by all railroads, railroad companies and common carrier doing business in this State over their respective lines or connecting lines," and by section 8 they are required to "make and furnish to each railroad corporation doing business in this State as soon as practicable, a printed or written schedule of just and reasonable rates and charges for transportation of freights, passengers and cars upon its railroad or railroads under its control or management."

The returns do not deny, but specifically admit, that the defendant "did control and operate the main and branch lines of" the West Shore under the first contract. It does not deny that it controls and operates the same road under the second agreement, but denies simply that it controls and operates same otherwise than under the

terms of the second agreement. A careful reading of that agree-
64 ment satisfies the court that under its terms the Seaboard has "the right, license or permission to operate" the West Shore railway, and that such railway is "in use" by the Seaboard and "operated by" it under "a contract or agreement," within the meaning of the railroad commission law, and that under section 6 of that law the commissioners are authorized to make reasonable and just rates of freight and passenger tariffs to be observed by the Seaboard in the operation of the West Shore. There is nothing in the language of the statute which justifies the construction contended for, *viz:* that the operation of the road must be under such a contract as that the operation is for the benefit of the operating company as by a lease or other contract under which the operating company will be entitled in its own right to the income or profits of the business. We entertained the same view of the first contract in overruling the motion to quash the alternative writ, and see nothing in the substituted contract to cause us to change the opinion then entertained. The companies having entered into the relationship shown by the contract voluntarily after the passage of the railroad commission law have no ground to complain that their freight and passenger rates are to be fixed and regulated in view of that relation. It is contended, however, that the contract does not constistitute the two roads one road within the meaning of the commission rule #1, set up in the alternative writ. The regulation here sought to be enforced does not attempt merely to apply rule #1 to the two companies, but sets forth and adopts a schedule of rates for all classes of freight transported to and from points on the Seaboard in Florida, from and to points on the West Shore, and to and from points on the West Shore to and from other points on the same road. If, therefore, the language of the rule is not broad enough to embrace the present case, the special regulation here sought to be enforced is within the power conferred upon the commissioners and can, therefore, be enforced notwithstanding the inapplicability of rule #1. The court is, therefore, of opinion that the returns in so far as they rely upon the contract set up, furnish no answer to the writ.

65 The returns attempt to question the reasonableness of the rates established by the railroad commissioners. They contain general allegations that the rates are not just and reasonable, but these general allegations are qualified by other statements that the rates if enforced will not afford a reasonable income or in fact any net income over and above the reasonable cost of constructing and maintaining said railroads. The original return goes further and includes with the cost of construction and maintenance the payment of fixed charges, which counsel admitted in argument means taxes and interest on outstanding bonds. The vice in this method of pleading lies in the fact that the question of reasonableness is made to depend upon the capacity of the rates to yield a net income over and above the cost of constructing and maintaining the road

and the payment of fixed charges, whereas circumstances may exist under which rates are reasonable which do not afford a net income above the cost of operation and taxes, or the cost of operation, taxes and fixed charges. The returns set forth a few elements entering into the question as to what constitutes a reasonable rate, and attempt to make those elements controlling, whereas the conditions surrounding the operation of the road may deprive them of controlling force. The use of the words "reasonable cost of constructing" renders the pleading very ambiguous. The reasonable cost of construction is to be considered in determining the fair value of the company's property, which is an element entering into the question of reasonableness of the rate, but the cost of construction is not to be deducted from the earnings under the proposed rates in ascertaining if those rates are reasonable, for under such a rule the public would be compelled to pay for constructing the road without being entitled to its ownership.

The amended return seeks to test the reasonableness of the rates by taking into consideration as part of the income of the road a portion of the earnings from interstate and foreign commerce
66 whereas under the decisions of the Supreme Court of the United States this can not be done. No doubt interstate and foreign business can and should be considered in determining the proportion of the value of the property assignable to domestic business, and for other purposes, but no part of the earnings or losses from such business can be charged to or against the income account of the company in ascertaining the reasonableness of domestic rates. See Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. Rep. 418; Chicago, M. & St. P. Ry. Co. v. Thompkins, 176 U. S. 167, 20 Sup. Ct., Rep. 336; Minneapolis & St. Louis R. R. Co. v. Minnesota, 186 U. S. 257. See, also, San Diego Land & Town Co. v. City of National City, 174 U. S. 739, 19 Sup. Ct. Rep. 804.

It is contended by relators that a return questioning the reasonableness of a rate sought to be enforced by mandamus must set up in detail the facts and figures from which the court can see that the rates are reasonable. There is force in the suggestion that as the law makes the rates *prima facie* reasonable, an attack upon such rates should be full and specific, showing facts from which the court can say affirmatively that they are not reasonable. No doubt some such degree of particularity would be required in a bill in equity seeking to enjoin such rates. But we do not think this case stands in the attitude of a bill in equity. Here an attempt is made to enforce the rates, and the alternative writ necessarily by implication at least, alleges that the rates are reasonable. The relators are not required to set out specially the facts showing that the rates are reasonable because the law makes the schedule of rates prescribed by the commissioners *prima facie* reasonable. The allegations of the return attacking the reasonableness of the rates are of the nature of a denial of the implied allegations of reasonableness in the writ. If particulars were required in the return it would lead to great

prolixity in pleading, and so many elements enter into the question which would be of greater or less force according to circum-
67 stances, that it would be almost impossible to frame a return upon such a theory. We think a return which alleges positively and unequivocally that the passenger and freight tariffs prescribed by the commissioners are unreasonable, and that they do not give to the company fair and reasonable compensation for the services required to be perfomred by it, may be held to sufficiently set forth the ultimate fact in this class of cases without requiring a more detailed statement of particular facts which after all are mere evidentiary facts bearing upon the ultimate fact. This rule obtains in negligence cases where it is only necessary to allege that the act was negligently and carelessly done, without further particulars, and we hold that from necessity in this class of cases allegations of the nature suggested will be sufficient. See People *ex rel.* Pekin, Lincoln and Decatur Railroad Co. v. Board of Supervisors of Logan County, 63 Ill., 374.

The third plea which was held good on demurrer in the case of Pensacola & A. R. Co. v. State, 25 Fla., 310, 5 South. Rep., 833, was very general in its language, the court remarking that under it any legitimate evidence upon the question of reasonableness might be given.

From the views expressed it results that the motions to quash the returns must be granted, but as respondent asks leave to amend, leave is granted to file an amended return denying the reasonableness of the rates prescribed on or before the 26th inst., the State to plead thereto on or before the 29th inst.

Taylor, C. J., and Hocker, Shackleford and Cockrell, JJ., concur.

Whitfield, J., being disqualified, took no part in the consideration of this case.

68 And thereafter on the same day, the 21st day of July, A. D. 1904, the supreme court of Florida entered its judgment granting the motion to quash the returns, with leave to the respondent to file an amended return on or before the 26th instant, which judgment is in the words and figures as follows, to-wit.

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* RAILROAD COMMISSIONERS, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } (# 1.)

This cause coming on to be heard upon motions of counsel for the relators to quash the returns of the respondent to the alternative writ of mandamus, and the same having been argued by counsel for the respective parties, and the court having considered the same, and being now advised of its judgment in the premises, it is ordered

that the said motions to quash the returns be and the same are hereby granted, with leave to the respondent to file an amended return denying the reasonableness of the rates prescribed, on or before Tuesday, the 26th instant, the State to plead thereto on or before Friday, the 29th instant.

The opinion of the court in this cause was this day read by Mr. Justice Carter, and ordered to be filed.

(Mr. Justice Whitfield, being disqualified, took no part in the disposition of this case.)

69 And afterwards, to-wit: on the 26th day of July, A. D. 1904, the respondent filed its amended return to the alternative writ of mandamus, which return is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, the Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,

vs.

SEABOARD AIR LINE RAILWAY, a Corporation, etc., Defendant.

The Amended Return of the Seaboard Air Line Railway, a Corporation, etc., the Defendant, to the Alternative Writ of Mandamus in the Above Cause.

The Seaboard Air Line Railway, defendant aforesaid, for an amended return, made by leave of court, to said alternative writ of mandamus, says:

That the passenger and freight tariffs prescribed by the railroad commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule of tariff of rates sought to be enforced in this proceeding are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be

70 performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida railroad commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY,
Division Counsel for Florida.

Attest: ——— ———, Secretary.

JNO. C. COOPER,
GEO. P. RANEY,
Attorneys for Defendant.

STATE OF FLA., }
Duval Co. }

Before me a notary public State of Florida at large, personally appeared D. E. Maxwell, and he being duly sworn deposes and says that he is general agent of the Seaboard Air Line railway, a corporation, etc., respondent in the above cause, and that the statements made in the above return are true.

D. E. MAXWELL.

Sworn to and subscribed before me this 23 day of July, 1904.
Witness my hand and official seal.
[SEAL.] C. LYMAN SPENCER,
Notary Public, State of Florida, at Large.

My commission expires January 29th, 1907.

71 And afterwards, to-wit: on the 29th day of July, A. D. 1904, the plaintiff filed a motion to quash the amended return of the respondent to the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General of the State of Florida, and J. M. Barrs, Special Counsel for the Railroad Commissioners of said State, } #1.
vs.
SEABOARD AIR LINE RAILWAY.

Motion to Quash the Amended Return to Alternative Writ of Mandamus and for Issuance of Peremptory Writ of Mandamus.

And now comes the plaintiff in the above entitled cause, by W. H. Ellis, its attorney-general, and J. M. Barrs, special counsel for the railroad commissioners of the State of Florida, and moves the court to quash the amended return of the respondent to the alternative writ of mandamus herein and to issue a peremptory writ of mandamus in accordance with said alternative writ heretofore issued. And for grounds of its said motion, the plaintiff shows to the court here the following:

1. That said return is frivolous and evasive.
2. That said return does not allege positively and unequivocally that the passenger and freight tariffs prescribed by the commissioners are unreasonable.

72 3. That the return shows no cause why the alternative writ should not be made peremptory.

WM. H. ELLIS,
Attorney-General of the State of Florida.
J. M. BARRS,
Special Counsel for the State of Florida.

And afterwards, to-wit: on the 30th day of July, A. D. 1904, the supreme court made an order denying the motion of plaintiff to quash the amended return, and for a peremptory writ of mandamus, which order is in the words and figures following, to wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiffs,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } (No. 1.)

This cause having been submitted to the court upon motion of plaintiffs to quash the amended return and for a peremptory writ of mandamus, upon consideration thereof it is ordered that the said motion be and the same is hereby denied.

And afterwards, to wit: on the 1st day of August, A. D. 1904, the plaintiff filed its joinder of issue and motion for order to take testimony, which joinder and motion are in the words and figures following, to-wit:

73 In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, &c.,
vs.
THE SEABOARD AIR LINE RAILWAY, &c. } (#1.)

Joinder of Issue on Return and Motion for Order to Take Testimony.

Now comes the State of Florida and joins issue upon the amended return of respondents to the alternative writ of mandamus issued herein and moves the court for an order to take testimony on the issues joined.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the State of Florida.

And on the same day, to-wit: the 1st day of August, A. D. 1904, the supreme court made an order that the cause be set for trial on the 4th day of October, A. D. 1904, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

Mr. Justice Whitfield, being disqualified in the following case retires from the bench:

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. Co., Defendant. } (No. 1.)

74 Counsel for the respondent having announced in open court that it did not desire to apply for leave to further amend its return, comes now the plaintiff and files its joinder of issue upon the amended return of the respondent to the alternative writ of mandamus herein, and moves for an order to take testimony on the issues joined; and thereupon the cause being at issue, it is ordered that same be set for trial on the 4th day of October, A. D. 1904, upon which day the parties are required to produce their testimony before the court. In the meantime, if either party so desires, it may take depositions of witnesses, upon commission issued by the clerk of this court, or before a justice of the peace in accordance with the statutes of this State and the rules governing circuit courts in the matter of depositions; and the clerk of this court is directed to issue commissions for the taking of such depositions as may be duly applied for by either party, in accordance with such statutes and rules.

And afterwards, to-wit: on the 4th day of October, A. D. 1904, the supreme court made an order continuing the cause for hearing on Wednesday, the 12th instant, which order is in the words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

Mr. Justice Whitfield, being disqualified in the following case, retires from the bench:

THE STATE OF FLORIDA *ex Rel.* RAILROAD COMMISSIONERS *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } # 1.

This cause having been set for trial on this day, now upon application of counsel for the respondent it is ordered that the same be continued for hearing on Wednesday, the 12th instant.

75 And afterwards, to-wit: on the 12th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } No. 1.

This cause being at issue and being set for trial on this day, come now the parties by their counsel, and the defendant produces and files as evidence the annual report of the Seaboard Air Line railway for the year ending June 30, 1904, filed with the railroad commission, and the seventh annual report of the railroad commission; and the plaintiff's counsel announcing that he would introduce no testimony, thereupon the cause is continued for argument until to-morrow.

Mr. Justice Whitfield, being disqualified, took no part in this matter.

And afterwards, to-wit: on the 13th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

Mr. Justice Whitfield, being disqualified in the following case, retires from the bench:

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant. } (No. 1.)

76 In pursuance of an order entered herein on yesterday, this cause is now submitted on the evidence introduced at that time and the argument of counsel for the respective parties, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit, on the 19th day of October, A. D. 1904, the supreme court of Florida filed with the clerk of said court its opinion in said cause, which opinion is in the words and figures as follows, to-wit:

77 In the Supreme Court of Florida, June Term, A. D. 1904.
En Banc,

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, Respondent.
(No. 1.) Original.

Per Curiam:

The issues and the burden of proof in this case were set out fully in our opinion filed on the motion to quash the return, — Fla. —, 37 South. Rep. 314. The respondent has wholly failed to meet these issues and the peremptory writ must, therefore, be awarded.

Judge Carter, if present, would concur.

Taylor, C. J., Shackleford, Cockrell and Hocker, JJ., concur.

Carter, J., absent. Whitfield, J., being disqualified, took no part in the consideration of this case.

78 And afterwards, to-wit: on the 19th day of October, A. D. 1904, the supreme court entered its judgment finding the issues in favor of the plaintiff, and granting a peremptory writ of mandamus, which judgment is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, Defendant.
1.

This cause coming on to be heard upon the amended return of the respondent filed by leave of the court July 26, 1904, and the joinder of issue upon the amended return of the respondent to the alternative writ of mandamus issued herein, and upon the documentary evidence in behalf of the respondent submitted on the 12th instant, and having been argued by counsel for the respective parties, and the court having considered the same, and being now advised of its judgment in the premises finds the issues in favor of the plaintiff; therefore it is ordered that the peremptory writ of mandamus be and the same is hereby granted; and it is further ordered that the plaintiff do recover of the respondent its costs by it in this

behalf expended, which costs are taxed at the sum of —;
79 and it is further ordered that the respondent is required to make return to this court instanter of its full compliance with the commands of the said peremptory writ of mandamus.

The opinion of the court in this cause was this day read and ordered to be filed.

Mr. Justice Whitfield, being disqualified, took no part in the consideration of this case.

And afterwards, to-wit: on the 2nd day of November, A. D. 1904, the supreme court made an order in the words and figures following to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

It is ordered that the minutes of February 15, 1904, be amended, *nunc pro tunc*, by inserting therein the following:

THE STATE OF FLORIDA *ex Rel.* THE RAILroad Commissioners of the State of Florida, J. B. Whitfield, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff, vs. THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Defendant.	(No. 1.) Mandamus.

80 It appearing to the court that the above named J. B. Whitfield has resigned as attorney-general of the State of Florida, and that W. H. Ellis has been appointed and is now the attorney-general of said State, it is orderd that this cause do proceed in the name of "W. H. Ellis as attorney-general of said State," as one of the relators, in lieu of J. B. Whitfield, resigned.

81 And afterwards, to-wit: on the 2nd day of November, A. D. 1904, came the respondent, by counsel, and filed in open court before the chief-justice its petition for the allowance of a writ of error to the judgment heretofore rendered herein returnable before the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,

vs.

SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Defendant.

(No. 1.)

To the Honorable R. Fenwick Taylor, chief-justice of the supreme court of the State of Florida:

The petition of The Seaboard Air Line Railway, a body corporate under the laws of the States of Virginia and North Carolina, the respondent in the above stated cause, showeth that a final judgment was rendered by the said supreme court of the State of Florida in said cause on the 19th day of October, A. D. 1904, and that said cause is an action by writ of mandamus in said supreme court of Florida in the exercise of its original jurisdiction; and that in and by said judgment a peremptory writ of mandamus was awarded against respondent, compelling the respondent to
82 put into operation and effect a schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida by an order made on the 25th day of June, A. D. 1903, for freight shipments from or destined to points on the Florida West Shore railway and from points on the Florida West Shore railway to points on the Florida West Shore railway over the Seaboard Air Line railway from points in Florida to points in Florida; and that in and by the amended return of respondent to the alternative writ of mandamus in said cause it was alleged by respondent that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by respondent in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, were unreasonable, and did not give to the respondent fair and reasonable compensation for the services required to be performed by it in the carriage of freight and passengers and that the enforcement of such tariff of rates of said Florida railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the laws, contrary to the guarantees of the Constitution of the United States and the amendments thereof. That by the decision and judgment of the said supreme court of the State of Florida, rendered upon the issues made by said amended fifth return after the hearing of testimony in the cause, it was adjudicated by said supreme court of Florida both that the rate so prescribed by said order of the railroad commission was not unreasonable and that said rate, taken in connection with the other

rates prescribed by the said railroad commission does not deprive the respondent of its property without due process of law nor of the equal protection of the lawv within the inhibition of the Federal Constitution.

The said supreme court oof the State of Florida is the highest court of the State of Floridaa having jurisdiction of said cause, and said judgment is a final juddgment in the highest court of the State of Florida in which a deecision in said suit could or can be had.

83 Your petitioner, therefore, prays your honor to allow a writ of error to the saaid respondent in the above stated cause, returnable to the Supreme Court of the United States, according to the rules of said last named court, the acts of Congress and the Constitution of the United States in such cases made and provided; and that your honor will fix thee amount of the penalty of the bond to be given by petitioner and tdo operate as a supersedeas to the enforcement of such judgment of the supreme court of Florida.

And your petitioner, as in duty bound, will ever pray.

GEO. P. RANEY,
Attorney for Petitioner.

Whereupon on the said daay, the 2nd day of November, A. D. 1904, the prayer of the petitionerr was granted by an order in the words and figures as follows, to-wit:

Upon reading and considdering the foregoing petition, and it appearing that the cause is one in which the Seaboard Air Line railway is entitled to a writ oof error under the Constitution of the United States and the acts of Congress, the writ of error hereby prayed for is hereby alloweed; and the amount of the penalty of the bond to be given by petitiooner to operate as a supersedeas to the enforcement of the judgmeent of the supreme court of Florida is hereby fixed at three thousaand dollars.

Done at Tallahassee, Florrida, this the 2nd day of November, A. D. 1904.

R. F. TAYLOR,
Chief-justice Supreme Court of Florida.

And thereafter upon the same day, the 2nd day of November, A. D. 1904, upon presentattion to the chief-justice of the aforesaid petition for the allowance off writ of error, the same was allowed by the chief-justice as appears upon the original writ of error, the original of which writ of errorr, with the allowance thereof, is in the words and figures as followss, to-wit:

84 THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Florida before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between the State of Florida upon the relation of W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, and the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina, wherein was drawn in question the validity of an authority exercised under said State on the ground of the same being repugnant to the Constitution of the United States as depriving said Seaboard Air Line railway of its property without due process of law, and of the equal protection of the laws, and the decision was in favor of the validity of such authority, a manifest error hath happened to the great damage of the said Seaboard Air Line railway, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of December, A. D. 1904, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court of the United States, the 2nd day of November, in the year of our Lord nineteen hundred and four.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk United States Circuit Court, Fifth Circuit
and Northern District of Florida,
By J. J. HODGES,
Dep. Clerk.

Writ of error allowed November 2nd, 1904.
R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

[Endorsed:] Filed Nov. 2, 1904. B. B. Wilson, clerk supreme court.

85 And upon the same day, the 2nd day of November, A. D. 1904, a citation was allowed by the chief-justice as appears by the original thereof, which original citation with acceptances of service thereof by the attorneys for the defendant in error, is in the words and figures as follows, to wit:

86 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Florida upon the relation of W. H. Ellis, as attorney-general of said State, and J. M. Barrs, as special counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, railroad commissioners of said State, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first day of December, A. D. 1904, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein The Seaboard Air Line Railway, a corporation under the laws of the States of Virginia and North Carolina, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the final judgment therein rendered against the said plaintiff in error on the 19th day of October, 1904, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, this the second day of November, in the year of our Lord nineteen hundred and four (A. D. 1904).

R. F. TAYLOR,
Chief-Justice of the Supreme Court of Florida.

By the chief-justice:

[Seal Supreme Court of the State of Florida.]

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

Service accepted this November 3rd 1904.

W. H. ELLIS,
Att'y Gen'l, State of Florida.

Service accepted this 4th day of November 1904.

J. M. BARRS,
Special Counsel for Railroad Commissioners
of the State of Florida.

[Endorsed:] The State of Florida *ex rel.* W. H. Ellis, att'y-gen., etc., v. Seaboard Air Line Railway (# 1). Citation. Filed Nov. 11, 1904. B. B. Wilson, clerk supreme court.

87 And thereafter on the same day, the 2nd day of November, A. D. 1904, the original supersedeas bond of the plaintiff in error on this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, was filed, which supersedeas bond is in the words and figures as follows, to-wit:

Approved as to form.

LEIGH R. WATTS,
General Counsel.

Know all men by these presents, that we, the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina and other States, as principal, and the United States Fidelity & Guaranty Company of Baltimore, a body corporate under the laws of the State of Maryland, as surety, are held and firmly bound unto the State of Florida in the sum of three thousand dollars, to be paid unto the State of Florida, its successors and assigns; the payment of which amount, well and truly to be made, we bind ourselves and our successors jointly and severally firmly by these presents.

Sealed with our seals this the 2 day of November, A. D. 1904.

Whereas, lately at a term of the supreme court of the State of Florida, in a cause pending in said court wherein The State of Florida upon the relation of William H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, was plaintiff, and the said Seaboard Air Line Railway, which is described in said proceedings as a body corporate under the laws of Virginia and North Carolina, was defendant, a final judgment was rendered in and by said court against said defendant on the 19th day of October, in the year 1904, awarding a peremptory writ of mandamus against said Seaboard

88 Air Line railway, commanding it to put into operation and effect the rates prescribed by an order of the railroad commissioners of the State of Florida made on the 25th day of June, 1903, to-wit: the schedule of freight tariffs adopted by said order for freight shipments from or destined to points on the Florida West Shore railway and from points on the Florida West Shore railway to points on the Florida West Shore railway over the Seaboard Air Line railway from points in Florida to points in Florida; and,

Whereas, the Seaboard Air Line railway is about to apply to the chief-justice of the supreme court of the State of Florida for the allowance of a writ of error to the Supreme Court of the United States for a review by said Supreme Court of the United States of the aforesaid judgment of the said supreme court of the State of Florida;

Now, therefore, the condition of the above obligation is such, that if the said Seaboard Air Line railway shall make such application to the chief-justice of said supreme court of the State of Florida and the chief-justice of said supreme court of the State of Florida shall

allow such writ of error and the Seaboard Air Line railway shall prosecute said writ of error to effect, and shall answer all damages and costs that may be awarded against said company if it fails to make good its plea, then the above obligation to be void, but otherwise to remain in full force and virtue.

[Seal of Seaboard Air Line Railway.]

SEABOARD AIR LINE RAILWAY,
By J. M. BARR.

Attest: ROB'T L. NUTT,
Ass't Secretary.

[Seal of U. S. Fidelity and Guaranty Company.]

UNITED STATES FIDELITY & GUARANTY COMPANY,
By R. W. WILLIAMS, JR., AND
R. W. WILLIAMS,
Its Attorney in Fact.

89 Approved this Nov. 2nd, 1904.
R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

And thereafter on the same day, the 2nd day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in said supreme court of Florida its assignment of errors on the writ of error to the Supreme Court of the United States, the original of which assignment of errors is in the words and figures as follows, to-wit:

90 In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Defendant.

No. 1. (No. 1.)

Now comes the respondent above named, and, in connection with its petition for writ of error, assigns the following errors in the action and proceedings of the said the supreme court of the State of Florida in said cause:

First. The court erred in overruling and denying the motion of the respondent, Seaboard Air Line Railway, to quash the alternative writ of mandamus.

Second. The court erred in making its order of March 29th, 1904, refusing to quash the alternative writ of mandamus.

Third. The court erred in quashing the return of the respondent to the alternative writ of mandamus.

Fourth. The court erred in making its order of July 21st, 1904, quashing the return of respondent to the alternative writ of mandamus.

Fifth. The court erred in quashing the further and additional return filed by the respondent to the alternative writ of mandamus.

Sixth. The court erred in making its order of July 21st, 1904, quashing the further and additional return of the respondent to the alternative writ of mandamus.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus.

Eighth. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida by an order made on the 25th day of June, A. D. 1903, was not unreasonable.

Ninth. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida, by its order of June 25th, 1903, taken in connection with the other rates prescribed by the said railroad commissioners of the State of Florida, to be observed by the respondent in the carriage of freight and passengers in the State of Florida, was not unreasonable.

Tenth. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida, by its order of June 25th, 1903 taken in connection with the other rates prescribed by the said railroad commissioners of the State of Florida, to be observed by the respondent in the
91 carriage of freight and passengers in the State of Florida, does not deprive respondent of its property without due process of law, within the inhibition of the Federal Constitution.

Eleventh. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida by its order of June 25th, 1903, taken in connection with the other rates prescribed by the said railroad commissioners of the State of Florida, to be observed by the respondent in the carriage of freight and passengers in the State of Florida, does not deprive respondent of its property without due process of law, nor of the equal

protection of the laws within the inhibition of the Federal Constitution.

Twelfth. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida by its order of June 25th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by the railroad commissioners of the State of Florida, to be observed by respondent in the carriage of freight and passengers in the State of Florida, does not deprive the respondent of its property without due process of law, within the inhibition of the Federal Constitution.

Thirteenth. The court erred in its final judgment awarding the peremptory writ of mandamus, and adjudging that the schedule of freight tariffs prescribed by the railroad commissioners of the State of Florida by its order of June 25th, 1903, was not unreasonable, and that said rates, taken in connection with the other rates prescribed by the railroad commissioners of the State of Florida, to be observed by respondent in the carriage of freight and passengers in the State of Florida, does not deprive the respondent of its property without due process of law, nor of the equal protection of the laws, within the inhibition of the Federal Constitution.

Fourteenth. The court erred in each and every of its judgments and orders rendered in the above cause.

Wherefore respondent prays that said errors may be cured, and the judgment of the said supreme court of Florida may be reversed and held for naught.

GEO. P. RANEY,
Attorney for Petitioner.

91½ [Endorsed:] Filed Nov. 2 1904 B. B. Wilson, clerk supreme court.

92 And afterwards, to-wit: on the 29th day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in the supreme court of Florida its petition for an order extending the time for filing the record in the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation. } No. 1.

To the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida:

The petition of The Seaboard Air Line Railway, defendant above named, respectfully shows that owing to the pressure of other business requiring the attention of Mr. Geo. P. Raney, its division counsel for the State of Florida, who has had the above cause in charge, and the consequent inability of such counsel to give the necessary attention to the making up of the record in the above case, the same has not been made up and can not be made up in time to be filed on the return day of the writ of error in the above case, and therefore your petitioner prays that your honor will grant additional time for the making up and filing of said record in
93 the Supreme Court of the United States, and, as in duty bound, your petitioner will ever pray.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY, Division Counsel.

STATE OF FLORIDA, }
Leon County. }

Geo. P. Raney being duly sworn deposes and says that the statements made in the above petition are true.

GEO. P. RANEY.

Sworn to and subscribed before me this 28th day of November, 1904.

B. F. WILLIS,
Notary Public.

And thereafter on the said day, the 29th day of November, A. D. 1904, an order was made by the chief-justice extending the time for filing the record, which order is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation. } No. 1.

94 This day came The Seaboard Air Line Railway, respondent, by George P. Raney, Esq., its attorney, and made application for an order extending the time for the filing of the record in this case as above, and cause being shown therefor, such application is granted and the time for filing said record on the part of the respondent is extended until, to-wit, the ninth day of January, 1905.

Done and ordered this 29th day of November, 1904.

R. F. TAYLOR,
Chief-Justice of the Supreme Court
of the State of Florida.

95 And during the same term of the supreme court of Florida, and on the 23rd day of December, in the year of our Lord one thousand nine hundred and four, the said defendant made up and tendered its bill of exceptions which were settled and signed by the chief-justice of said court and ordered to be made a part of the record, which said bill of exceptions is in the words and figures as follows, to-wit:

96 In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA on the Relation of W. H. ELLIS, as Attorney General, and J. M. Barrs, as Special Counsel for the Railroad Commissioners, of the State of Florida,
vs.
SEABOARD AIR LINE RAILWAY. } No. 1.

Be it remembered, that on the 12th day of October, in the year of our Lord one thousand nine hundred and four, at a term of the supreme court of the State of Florida, beginning and holden at Tallahassee, in the State of Florida, before Honorable R. Fenwick Taylor, chief-justice of said court, and the Honorables Francis B. Carter, Thomas M. Shackleford, William A. Hocker and Robert S. Cockrell, associate judges of said court, the issue joined in the above stated cause between the said parties (upon the pleadings) came on to be tried before the said chief justice and said associate justices, and upon the trial of that issue The Seaboard Air Line Railway, respondent, pur-

suant to the statute in such cases made and provided, to maintain and prove the issue on its part, then and there offered in evidence the report of the said Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and the same on being so offered was filed in evidence and is in the words and figures following, to-wit:

(Here follows Exhibit A, marked pp. 97, 98, 107, 109, 111, 116, 117, 119, 120, 121, 123, 125, 127, 129, 130, 131, 133, 135, 136, 137, 138, 139, 141, 143, 145, 147, 149, 151, 153, 157, 159, 161, 163, 165, 169, 171, 185, 187 and 191.)

No. 1

ANNUAL REPORT

a

OF THE

Seaboard Air Line Railway

TO THE

RAILROAD COMMISSION

OF THE

STATE OF FLORIDA

FOR THE YEAR ENDING JUNE 30, 1904.

NOTE.

1. This Form for Annual Report should be filled out and returned to the Office of the Railroad Commission, Tallahassee, Florida, by September 15, 1904.

2. It will be observed that on each left-hand page Instructions are printed for answering the questions asked on the page opposite. Each question should be answered fully and accurately, whether the question has been answered in a previous Annual Report or not. It is intended that the Report for each year shall, in all particulars, be complete in itself, and references to the returns of former years should not be made to take the place of required entries.

3. Provision is made in the Form for two general classes of railway companies, namely: Operating Companies and Subsidiary Companies.

4. By an Operating Company is to be understood one whose officers direct the business of transportation, and whose books contain operating accounts as well as financial accounts. For such a Company an *Operating Report* should be rendered.

5. By a Subsidiary Company is to be understood one which, although merged in an operating system by means of a lease, an operating contract or agreement, or controlled through the ownership of a majority of its capital stock (as should be stated on page 15), yet maintains an independent legal existence and separate accounts. In case of a Subsidiary Company whose books contain only financial accounts, a *Financial Report* should be rendered; but in case of a Subsidiary Company whose officers direct the business of transportation, and whose books contain operating accounts as well as financial accounts, an *Operating Report* should be rendered.

6. In making an *Operating Report* the pages of this Form especially designed to be used are pages 9A, 9, 11 (upper part), 25 "B," 31, 35, 41 (upper part), 43, 45, 47 "B," 61A, 61, 63, 67 "A" and "B," 67B "A" and "B," 69 (lower part), 71, and 77; but appropriate entries should be made also on pages 3, 5, 7, 11 (lower part), 15, 17, 19, 21, 23, 25 "A," 27, 29, 37, 39, 41 (lower part), 47 "A," 49, 51, 53, 55, 57, 59, 65, 67 "C," 67B "C," 69 (upper part), 73, 75, 79, and 81, as they may apply.

7. In making a *Financial Report* the pages of this Form especially designed to be used are pages 13 and 33; but appropriate entries should be made also on pages 3, 5, 7, 11 (lower part), 15, 17, 19, 21, 23, 25 "A," 27, 29, 37, 39, 41 (lower part), 47 "A," 49, 51, 53, 55, 57, 59, 65, 67 "C," 67B "C" 69 (upper part), 73, 75, 79, and 81, as they may apply.

PROPERTY OPERATED—STATE OF FLORIDA.

[FOR ROADS MAKING OPERATING REPORTS.]

NAME OF EVERY RAILROAD THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

IN GIVING ROADS BELOW, OBSERVE THE FOLLOWING CLASSIFICATION AND ORDER:

1. Railroad Line represented by Capital Stock:
   - A. Main Line.
   - B. Branches and Spurs. [See "Instructions," page 8.]
2. Proprietary Companies whose entire Capital Stock is Owned by this Company.
3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
1 A. S. A. L. Ry	Ga. State Line	Jacksonville	34.16	
	Jacksonville	River Junction	209.06	
	Fernandina	Cedar Key	155.70	
	Waldo	Tampa	155.44	
	Drifton	Monticello	4.38	
	Tallahassee	St. Marks	20.35	
	Fernandina	Amelia Beach	.25	
	Archer	Early Bird	28.75	
	Wildwood	Lake Charm	70.16	
	Silver Spring Jct.	Silver Spring	1.90	
	Sumpterville "	Sumpterville	2.07	
	Summerfield	Lake Weir	7.65	
	Starke	Hannee	56.44	746.31
1 B. S. A. L. Ry.	24 m P. Archer Branch	Mines	2.83	
	Early Bird	Lynne	.60	
	Lake Griffin	"	.59	
	Camp	"	1.71	
	Duenty	"	1.95	7.68
		Total ~~carried forward~~,		753.99

PROPERTY OPERATED.

[FOR ROADS MAKING OPERATING REPORTS.]

58

NAME OF EVERY RAILROAD THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

IN GIVING ROADS BELOW, OBSERVE THE FOLLOWING CLASSIFICATION AND ORDER:

1. Railroad Line represented by Capital Stock:
   - A. Main Line.
   - B. Branches and Spurs. [See "Instructions," page 8.]
2. Proprietary Companies whose entire Capital Stock is Owned by this Company.
3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
1A Seaboard Air Line Ry.	Hamilton	Norlina	102.10	
	Portsmouth	Weldon	38.60	
	Weldon	Raleigh	76.20	
	Raleigh	Hamlet	76.60	
	Wilmington	Rutherfordton	264.63	
	Monroe	Bell Junction	261.10	
	Bell Junction	Hayelle	8.10	
	Hamlet	Cheraw	18.28	
	Cheraw	Camden	54.74	
	Camden	Columbia	32.66	
	Columbia	Savannah	138.55	
	Savannah	Meldrim	16.77	
	Ligone	Montgomery	262.97	
	Savannah	Jacksonville	138.76	
	Jacksonville	River Junction	209.06	
	Fernandina	Cedar Key	155.70	
	Waldo	Tampa	133.44	
	Henderson	Durham	41.40	
	Jackson	Littleton	33.56	
	Boykins	Lawrenceville	33.00	
	Franklinton	Louisburg	10.00	
	Moncure	Pittsboro	11.20	
	Ellenboro	Carolina	4.70	
	Mill Junction	Henrietta Mills	1.70	
	Lawrenceville	Sycamore	10.33	
	Hamlet	Gibson	10.13	
	Columbus	Albany	88.00	
	Abbeville	Ocilla	30.80	
	Savannah River Junction	Fort Pierce Island	2.08	
	Kissimmee	Tavares	4.38	
	Tallahassee	St. Marks	20.33	
	Fernandina	Amelia Beach	2.33	
	Archer	Cordy Bird	28.73	
	Wildwood	Lake Charm	70.16	
	Silver Spring Jct.	Silver Spring	1.70	
	Sumpterville "	Sumpterville	2.07	
		Total carried forward.	2468.61	

PROPERTY OPERATED—CONTINUED.

[FOR ROADS MAKING OPERATING REPORTS.]

59

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
Total brought forward,			246861	
Seaboard Air Line Ry.	Starke	Hampton	5644	
	Summerfield	Lake Weir	765	253270
1 B. Seaboard Air Line Ry.	Roanoke Jct.	Roanoke Rapids	254	
	Archer	Mine	283	
	Early Bird	Mine	60	
	Lake Griffin	Mine	37	
	Camp	Spur	171	
	Quincy	Owl Hill	173	
	Belt Junction	Junction Park	300	1522
3 Central of Georgia	Lyons	Meldrim	3765	3765
4 Filmington Ry & Bridge Co.	Filton	Narassa	240	240
5 Western & Atlantic Ry.	Howells	Atlanta	300	300
Note:- The above does not include 2.00 miles of line from Fernandina & Amelia Beach Leased. Nor Buckley Creek Spur & Durant 11.33 miles Leased.		Total Mileage Operated,		261097

NAME OF ALL COAL, BRIDGE, CANAL, OR OTHER PROPERTIES, THE EARNINGS AND EXPENSES OF WHICH AFFECT THE GENERAL BALANCE SHEET—PAGES 49 AND 51.

NAME.	CHARACTER OF BUSINESS.	TITLE. [OWNED, LEASED, ETC.]	STATE OR TERRITORY.
	None		

EXPLANATORY REMARKS.

In addition to the outstanding capital stock of $62,500,000.00, as shown on page 17, there is outstanding in the hands of the public $98,639.43 par value of Proprietary Line stock, which is being bought up as fast as possible, and for the purpose of acquiring same we have set up a sum for a like amount showing same on general balance sheet as reserve for acquiring outstanding capital stock of proprietary companies.

CAPITAL STOCK

DESCRIPTION		NUMBER OF SHARES AUTHORIZED	PAR VALUE OF SHARES	TOTAL PAR VALUE AUTHORIZED	TOTAL AMOUNT ISSUED AND OUTSTANDING	DIVIDENDS DECLARED DURING YEAR	
						RATE.	AMOUNT.
Capital Stock:	Common,	375000	10000	3750000000	3750000000	None	None
	Preferred,	250000	10000	2500000000	2500000000	"	"
	TOTAL,	625000	10000	6250000000	6250000000	None	None

MANNER OF PAYMENT FOR CAPITAL STOCK.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,	None	None			
	Preferred,	"	"			
Issued for Construction:	Common,					
	Preferred,					
Issued for Reorganization:	Common,	None	None	2000	None	
	Preferred,	"	"			
Issued for acquiring Securities of Proprietary Companies	Pref.	None		250000	None	
	Comm.	"		373000	"	
TOTAL,		None		625000	None	

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME. DATE OF ISSUE.	TIME. WHEN DUE.	AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
S.L.L. 1st Mtg.	1900	1930	75000000 00	34235000 00	12773000 00	Cannot State	4	Q.F.O.	511000 00	511000 00
" Col. 2d "	1901	1911	10000000 00	10000000 00	10000000 00	10000000 00	5	M.S.	500000 00	500000 00
" " " 3 "	1904	1907	5000000 00	5000000 00	5000000 00	5000000 00	5	M.S.	52083 33	"
S.F.R. 1st Mtg.	1896	1926	25000000 00	25000000 00	25000000 00	25011831 2	5	J.J.	1250000 00	1250000 00
" Registered	—	1916	6900000 00	6900000 00	2850000 00	6900000 00	6	J.J.	171000 00	171000 00
C.R.I.&P. 1st Mtg	1887	1917	26000000	26000000	5500000	26000000	"	A.O.	330000	330000
K.C.&S. " "	1887	1947	15000000 00	12000000 00	12000000 00	11507800 00	5	J.J.	600000 00	600000 00
L.&N. " "	1888	1928	24800000	15000000	10000000	14526452	6	J.M.N.	600000	600000
K.C.M.&B. " "	1880	1936	10000000 00	10000000 00	10000000 00	10000000 00	"	J.J.	600000 00	600000 00
Consolidated " "	1889	1949	30000000 00	30000000 00	30000000 00	Cannot State	4	"	1200000 00	1200000 00
L.&N.A. " "	1889	1937	5360000 00	5360000 00	5360000 00	4862600 00	5	"	268000 00	268000 00
Sinking " Consol	1895	1945	14000000 00	6185000 00	5985000 00	Cannot State	"	"	283383 33	283383 33
" " " Term Co.	1899	1948	1000000 00	1000000 00	1000000 00	" "	"	J.D.	50000 00	50000 00
T.&P. 1st Mtg.	1888	1918	30000000 00	30000000 00	30000000 00	31000000 00	5	J.J.	1500000 00	1500000 00
" " L.G.&Ext.	1890	1930	5000000 00	4680000 00	4100000 00	4680000 00	"	"	203000 00	203000 00
" " 1st Consol	1893	1943	78000000 00	43720000 00	43720000 00	27900000 00	"	"	2186000 00	2186000 00
So. Bound 1st Mtg	1891	1941	21000000 00	20330000 00	20330000 00	20330000 00	"	A.O.	1016300 00	1016300 00
TOTAL:										
Mortgage Bonds,			117938000 00	63473000 00	43075000 00	38761027 64			1994733 33	1994733 33
Miscellaneous Obligations,			13000000 00	13000000 00	15000000 00	15000000 00			532083 33	300000 00
Income Bonds,										
GRAND TOTAL.			132938000 00	80493000 00	58075000 00	53761027 64			2526816 66	2294733 33

EXPLANATORY REMARKS.

Table B

Note # 1. These are receiver notes of S.A. & M. Ry. and we are unable to separate interest and principal.

Note # 2. These are obligations on the bond plan with coupons attached drawing interest. The interest not being included in face of notes, only the principal is taken into account, the interest being accrued each month. The outstanding for unearned amount of interest is not stated for the reason that if shown the two columns "amount outstanding principal" and "amount outstanding interest" would not show the total outstanding June 30, 1904 of $3,442,347.29 as shown on page 23 and carried to balance sheet.

FUNDED DEBT—CONTINUED.
EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Lease # 99	Mch 10" 1898	7 Years	84	250 Box Cars	Box Cars # 4734 to 5232 excl numbers
Ohio Falls Car Mfg. Co	Nov. 15 1898	" "	84	20 Refrig "	Nos. 1 to 20 inc.
Lease # 103	Mch 21, 1900	" "	84	200 Box "	" 17006 to 17199 Inc.
S. & L. Series B	Apl. 1, 1895	10 "	10	12 Locomotives	
" " C	" 1, 1896	10 "	10	12 Locos. 175 Box 100 Flats	
" " D	Nov. 1, 1899	20 "	20	5 Frg. Locos. 350 Box 2 Switch Locos. 150 Flats	Equipment held under lease until paid for in full
Blair & Co. " "A"	Sept. 1, 1900	6¾ "	23	700 Box 300 Vent. Box	
Vermelyn & Co. " "B"	Jany. 29, 1902	10 "	40	300 Flats 10 Pass. Locomotives 500 U. Box 10 Frg. Locos. 10 Pass Coaches	
Guaranty T. Co. " "C"	Feby 2, 1903	10 "	40	41 Locos. 100 Cabs. 1750 Box 400 Flats 200 Gondola Coal 250 Vent. Box	
N. Y. Sec & Te. Co. " "A"	June 1, 1904	10 "	20	500 Steel underframe Box cars. 10 Consol Engines 500 Vent Box 5 Engines	500 U. B. Nos 19001 to 19500 inc. 6708 7208 Nos. 700 to 909 inc. Nos 25001-25500

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
Lease # 99	311764	14668750	2224908	2740250	34842	173160	173160	
Rhode Island Loco Wks	None	2864484	"	See Note on page 20	"	"	"	
Series A. S. & L. Ry	"	25000000	"	" " 2 " "	"	"	"	
Ohio Falls Car Mfg. Co.	"	3920970	1343378	1214434	71261	111458	111458	
Lease # 103	3369600	12480000	3885777	2337600	464623	342597	342597	
Burnham Williams & Co.	3054375	18909108	"	1600983	"	19231	19231	
Series B. S. & L. Ry.	"	11000000	1100000	See Note 2 page 20	"	96256	96256	
" C "	"	25000000	5000000	" " " " "	"	343772	343772	
" D "	"	30000000	21000000	" " " " "	"	1075000	1075000	
Rich & Co. & Mch Wks	1425000	12947400	"	1108700	"	31100	31100	
" " "	2137500	17421136	"	1663088	"	62158	62158	
Pitts. Carc & Loco.	1422000	8712732	"	654732	"	33576	33576	
Blair & Co. Series A	27080000	115090000	45090000	See Note 2 page 20	"	2629500	2629500	
Vermilyn & Co. " B	1 31 29300	831 29300	5430000	" " " " "	"	258675-0	258675-0	
Guaranty T. Co. " C	2 843 0000	1 8930000	14550000	" " " " "	"	6016449	6016449	
N. Y. Sec. & Te. Co. " D	17275000	64000000	64000000	" " " " "	"	142222	"	
TOTAL.	97634539	638073880	343644063	11322787	590726	13663229	13521007	

Principal 3,436,442.63
Interest 5,907.26
Total 3,442,349.89

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortg ge Bonds—Page 19,	65493000000	43067500000	1994733333	1994733333
Miscellaneous Obligations—Page 19,	1500000000	1500000000	55208333	50000000
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,	63507338 80	34823478 87	1366322 29	1352100 7
TOTAL,	86573738 80	61317347 87	2683448 75	2629743 40

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1924.	
Cash,	1380 67433	Receiver's Certificates,	
Bills Receivable,	456411 82	Loans and Bills Payable,	385786 00
Due from Agents,	257054 07	Audited Vouchers and Accounts,	1446 68477
Due from Solvent Companies and Individuals,	74827 31	Wages and Salaries,	464859 23
Net Traffic Balances due from other Companies,	xxxxx	Net Traffic Balances due to other Companies,	65 19303
Other Cash Assets [Excluding "Materials and Supplies"].	109019 02	Dividends not Called for,	
		Matured Interest Coupons Unpaid (Including Coupons due July 1).	819730 00
		Rents due July 1,	
		Miscellaneous,	95617 33
TOTAL—CASH AND CURRENT ASSETS,	2278006 55	TOTAL—CURRENT LIABILITIES,	3277 87038
BALANCE—CURRENT LIABILITIES,	999863 83	BALANCE—CASH AND CURRENT ASSETS,	
TOTAL,	3277 87038	TOTAL,	3277 87038

Materials and Supplies on hand, $647,010.40

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT.		AMOUNT PER MILE OF LINE.		REMARKS.
		TO RAILROADS.	TO OTHER PROPERTIES. [Page 11.]	MILES.	AMOUNT.	
Capital Stock—Page 17,	62500000 00	62500000 00	None	255.423	244902	
Bonds—Page 19 ["Grand Total"],	38075000 00	38075000 00	"	255.423	227361	
Equipment Trust Obligations—Page 21,	3442347 89	3442347 89	"	255.423	13469	
TOTAL,	124017347 89	124017347 89	"	255.423	485332	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE.	
				MILES.	AMOUNT.
Seaboard Air Line Railway	62500000 00	61517347 89	124017347 89	260.797	475532 1
GRAND TOTAL,	62500000 00	61517347 89	124017347 89	260.797	475532 1

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS.

ITEM	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1904.	TOTAL COST TO JUNE 30, 1905.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
CONSTRUCTION:						
1. Engineering,			34471	6340643	6387841	270
2. Right of Way and Station Grounds,			141637257	206388310	348026035	13825
3. Real Estate,			1807567	8072852	9880372	3586
4. Grading,			3853776	30345356	34077152	13556
5. ~~Tunnels~~ Bonds of Subsidiary Companies sold					55000000	22307
6. Bridges, Trestles, and Culverts,			2240717	10870787	13111504	5138
7. Ties,			1745997	6665121	8338115	3270
8. Rails,			5666228	30675771	37341775	13903
9. Track Fastenings,			3637732	5406077	12043017	4715
10. Frogs and Switches,			1040731	3773185	5033137	1970
11. Ballast,			6754057	16077877	23861735	5751
12. Track Laying and Surfacing,			1648213	10161775	11730007	4600
13. Fencing Right of Way,			176606	839931	1016537	373
14. Crossings, Cattle Guards, and Signs,			1638205	1946223	3584830	1402
15. Interlocking or Signal Apparatus,			94304	675812	770116	273
16. Telegraph Lines,				13711 85	13711 85	54
17. Station Buildings and Fixtures,			6656693	32687070	39343763	15415
18. Shops, Roundhouses, and Turntables,			1163375	4063593	5226968	2027
19. Shop Machinery and Tools,			467422	3500851	4017603	1580
20. Water Stations,			73541	3855574	3929115	1546
21. Fuel Stations,			311075	1751175	3862270	1512
22. Grain Elevators,			25800	34857	60657	23
23. Storage Warehouses,				1000587	1000587	392
24. Docks and Wharves,			317719	7766748	12966661	3077
25. Electric-Light Plants,				9870	9870	36
26. ~~Electric-Motive-Power Plants~~ Issues & subscriptions of $12,000,000 - Stocks & Bonds					12500000 00	4873 80
27. ~~Car-Making Plants~~ Required by Control of Stock			15565251	31825630 87	30872775 36	12086 70
28. Miscellaneous Structures,			129449	773767	1226640	480
29. Legal Expenses,			39330	615798	833788	326
30. ~~Interest and Discount~~ Purchase of Securities of Roads				853319	853319	334
31. General Expenses,			171726	1087414	1166604	455
TOTAL CONSTRUCTION,			47078407	332330061	468037947	183296

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS—CONTINUED.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1903.	TOTAL COST TO JUNE 30, 1904.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
EQUIPMENT:						
1. Locomotives,			4674814	117823215	122497329	6450
2. Passenger Cars,			1506755	19777614	18478859	972
3. Sleeping, Parlor, and Dining Cars,						
4. Baggage, Express, and Postal Cars,				513693	513693	27
5. Combination Cars,						
6. Freight Cars,			4563972	312520486	338177635	17822
7. Other Cars of all classes,			827153	8531174	9358327	493
8. Floating Equipment,			100000	416774	516774	27
Acquired by contract of stock				22857122	22857122	1205
Destroyed Equipment to June 30, 1903					3776983	199
TOTAL EQUIPMENT,			7183683	610277728	724636788	38212
TOTAL CONSTRUCTION—PAGE 27,			47078407	3523320016	4680378467	246861
GRAND TOTAL COST CONSTRUCTION, EQUIPMENT, ETC.,			140713090	4013611518	5305015255	279737
Total Cost Construction, Equipment, Etc.—State of Florida,			4069512	1187133403	1566713772	82605

QUESTION	ANSWER.	REMARKS.
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. Yes	
2. Do the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?	2. None	

EXPLANATORY REMARKS.

Other Deductions			
Interest on Land Notes	4	921	81
Interest on temporary loan	113	088	77
Total of the deductions	118	010	78

Deductions for Year			
Portsmouth Shop Fire loss	126	472	30
Defered accounts	66	985	78
Ches. Ang. & Chatta Airline	56	447	14
Destroyed Equipment	214	337	29
Rail Shortage	30	685	99
Obsolete material	20	000	00
Notes receivable not collectible	34	278	44
Loss on sale and valuation securities	22	069	00
Reorganization expenses prior to 1903	79	905	96
Reserve set up for paid ft. claims	58	074	64
Sundry accounts	219	596	99
Suspended expenses of Commission	115	945	00
Reserve for accounts in litigation	100	000	00
Total deductions for year	1144	230	53

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	127295608 7	
Less Operating Expenses—Page 45,	90923066 1	
INCOME FROM OPERATION,		36370542 6
DEFICIT,		
Dividends on Stocks Owned—Page 37,	3040000	
Interest on Bonds Owned—Page 39,	1015500	
Miscellaneous Income—less Expenses—Page 41,	1045 00	41
INCOME FROM OTHER SOURCES,		4160000
TOTAL INCOME,		36786426
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	26834489 5	
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	489250 0	
Taxes—Page 79, A,	5337787	
Permanent Improvements—Page 29,		
Other Deductions,	1180108	
TOTAL DEDUCTIONS FROM INCOME,		33543376 2
NET INCOME,		2942746 4
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,		
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,		2942746 4
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		16474874 1
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Additions for Year,		
Deductions for Year,		1144230 53
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		7975371 32
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

INCOME ACCOUNT.

[FOR ROADS NOT MAKING OPERATING REPORTS.]

INCOME FROM LEASE OF ROAD,		
Dividends on Stocks Owned—Page 37,		
Interest on Bonds Owned—Page 39,		
Miscellaneous Income—less Expenses—Page 41,	None	
INCOME FROM OTHER SOURCES,		
TOTAL INCOME,		
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Salaries and Maintenance of Organization,	None	
Interest on Funded Debt Accrued—Page 23,		
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,		
Taxes—Page 79, A,		
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		
NET INCOME,		
DEFICIT,	None	
Dividends, per cent, Common Stock—Page 17,		
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,		
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]	None	
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

EARNINGS FROM OPERATION—STATE OF FLORIDA. 72

ITEM.	TOTAL RECEIPT.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	764 21 740		
Less Repayments—			
Tickets Redeemed,		1 25 7 42	
Excess Fares Refunded,		2 70 8 23	
Other repayments,		2 1 7 41	
Total Deductions,		4 18 5 08	
TOTAL PASSENGER REVENUE,			760 03 2 32
Mail,			6 30 3 6 49
Express,			9 7 4 5 3 72
Extra Baggage and Storage,			8 1 6 3 6 4
Other items,			1 4 4 4 00
TOTAL PASSENGER EARNINGS,			930 16 0 17
FREIGHT:			
Freight Revenue,	2 14 9 4 3 1 57		
Less Repayments—			
Overcharge to Shippers,		45 7 6 2 9 7	
Other repayments,		8 2 6 8 6 4	
Total Deductions,		5 4 0 3 1 6 3	
TOTAL FREIGHT REVENUE,			2 0 9 5 3 9 9 7 4
Stock Yards,			~~2 0 9 5 3 9 9 7 4~~
Elevators,			7 9 2 8 4 9 5
Other items,			~~7 9 2 8 4 9 5~~
TOTAL FREIGHT EARNINGS,			2 1 7 4 6 8 4 8 7
TOTAL PASSENGER AND FREIGHT EARNINGS,			3 1 0 4 8 4 5 0 6
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Per Diem and Mileage—Balance,			
Hire of Equipment—Balance,	12 8 4 1 23		
Telegraph and Telephone Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,	50 7 3 2 85		
Other sources,			
TOTAL OTHER EARNINGS,			6 3 5 7 4 0 8
Total Gross Earnings from Operation—Florida,			3 1 6 8 4 1 9 1 4
Total Gross Earnings from Operation—Entire Line,			1 2 7 2 9 5 6 0 8 7

EXPLANATORY REMARKS.

See page 53 for explanation

STOCKS OWNED.

A. RAILWAY STOCKS.

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NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
S.A.L. Ry. Common	50000000			50000000
" " Preferred	11000000			10000000
A.C.L.R.R. Common	1144200000			
" " Guaranteed	200000000			
" " 2nd Preferred	44200000			
" " Common	37500000			
C.F.&Y.V.R.R. "	14790000			
R.F.&P.R.R. "	3470100000			
R.&D.R.R. "	1821500000			
Car. Cent. "	1457200000			
" " " Pfd.	455500000			
" " " Scrip	73933			
C.C.&N.Ry. Common	11065000000			6273895378
Chas. & Hamlet R.R. "	500000000			
" " " Preferred	100000000			
S.A.L. Belt "	5000000			
Palmetto R.R. "	200000000			
Lewis Fayetteville "	20000000			
Lewis Burg "	4840000			
F.C.&P.R.R. "	1991750000			
" " " Preferred	4428200000			
Ga. & Ala. Ry. "	2817500000			
" " " Preferred	2634000000			
A.C.L. " Coast Line "	5400000			
A.C.L. & Birmingham Air Ry	1323500000			
Richmond & Wash. Line	44500000	4%	1780000	44500000
C.S.R.R. & Y. Common	38000000			25328378
Col. Newb. & Laurens "	833300			100000
Wilmington Ry. Bridge	2000000			100
Brick & Bonding Common	2033000000			2026577
Sou. East Line (N.&O. Belt)	630000			630000
TOTAL,	46028189533		1780000	6526914433

B. OTHER STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Baltimore Steam Packet Co.	40000000			8002291
Savannah Union Station Co.	10000000			3463836
Ga. Fla. Nav. & Ind. Nav. Co.	800000			807644
Georgia Construction Co.	2500000			2867833
Old Dominion S.S. Co.	21000000	6%	1260000	24875000
Atlantic Compress Co.	1250000			1250000
Jacksonville Terminal Co.	5000000			2672977
Seaboard Investment Co.	6250000			13223625
TOTAL,	86800000		1260000	131203853
GRAND TOTAL—A AND B,	46896189533		3040000	6658118285

EXPLANATORY REMARKS.

See page 53 for explanation

BONDS OWNED.

A. RAILWAY BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Florida West Shore Ry.	295-00000		787500	344 86 571
Seaboard & Roanoke Reg. 6's 2	405-00000			405-00000
Roanoke & Jar River R.R. 1st Mtg.	205-00000			205-00000
Durham & Northern 1st Mtg.	50000000			80000000
Jax Bound " "	725-00000			725-00000
Ches. & Kenshaw " "	50000000			30000000
Ga. & Ala. Ry. 1st Consol	20000000			205-00000
L. & A. L. " Mtg	60000000			51062500
Sub. to A. & B. A. L. " "	27500000			27787416
Atlanta & Birmingham Ry 2nd "	200000000			200000000
A. S. R. & G. 1st "	44800000			xxxxx
Oxford & Coast Line " "	2500000			54359 36
S. A. L. Ry Myr. C. J. Scrip	81000			81000
TOTAL,	582881000		787500	32785423

B. OTHER BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Florida Publishing Co. 1/3 Interest in $14,000.00 Bonds	✓	6%	28000	80000
Fernandina Terminal Co.	5000000			5000000
TOTAL,	5000000		28000	5080000
GRAND TOTAL—A AND B,	587881000		1015500	532933423

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RENTALS RECEIVED.

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY USING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:	Weldon to Norfolk	A. C. L. R.R.	563208	
	Atlanta Ga.	Atlanta Belt Ry. Co.	180000	
	Wilson Fla.	Fla. & Ga. Ry	24000	
	Archer & Moncton "	A. C. L. R.R.	432030	
	Tavares "	Tavares & Gulf "	18000	
	Chesaw & Marlings S.C.	Ben & Chesaw "	202500	
	Carthage, N.C.	Carthage "	144000	
	Sidings & Spurs	Various	624540	
TOTAL,				2188278
YARDS:				
TOTAL,				
TERMINALS:	Cordele Ga.	Albany & Nor. R.R.	84500	
	Lumberton N.C.	Carolina Nor. "	9000	
TOTAL,				93500
		GRAND TOTAL RENTS RECEIVED, [For entry on page 35.]		2281778

MISCELLANEOUS INCOME.

ITEM.	GROSS INCOME.	LESS EXPENSES.	NET MISCELLANEOUS INCOME.
Note- Col. Newb & Laurens R.R.	104500		104500
TOTAL,	104500		104500

ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	844 625 73
2. Renewals of Rails,	180 518 84
3. Renewals of Ties,	280 489 07
4. Repairs and Renewals of Bridges and Culverts,	260 316 55
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	18 328 40
6. Repairs and Renewals of Buildings and Fixtures,	133 000 31
7. Repairs and Renewals of Docks and Wharves,	25 472 42
8. Repairs and Renewals of Telegraph,	2 721 77
9. Stationery and Printing,	3 443 85
10. Other Expenses,	6 647 97
TOTAL,	1 675 755 51
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	32 174 06
12. Repairs and Renewals of Locomotives,	661 481 26
13. Repairs and Renewals of Passenger Cars,	291 772 28
14. Repairs and Renewals of Freight Cars,	598 534 56
15. Repairs and Renewals of Work Cars,	20 368 43
16. Repairs and Renewals of Marine Equipment,	7 285 03
17. Repairs and Renewals of Shop Machinery and Tools,	64 267 13
18. Stationery and Printing,	5 406 77
19. Other Expenses,	7 191 63
TOTAL,	1 774 207 37
CONDUCTING TRANSPORTATION:	
20. Superintendence,	211 769 47
21. Engine and Roundhouse Men,	713 274 29
22. Fuel for Locomotives,	1 363 767 37
23. Water Supply for Locomotives,	53 832 63
24. Oil, Tallow, and Waste for Locomotives,	36 307 37
25. Other Supplies for Locomotives,	17 561 30
26. Train Service,	404 383 72
27. Train Supplies and Expenses,	121 368 66
28. Switchmen, Flagmen, and Watchmen,	211 171 77
29. Telegraph Expenses,	176 021 08
30. Station Service,	695 784 52
31. Station Supplies,	51 318 17
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	29 711 41
34. Hire of Equipment—Balance,	
Total carried forward,	4 103 714 90

OPERATING EXPENSES—CONTINUED.

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ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	41859149
35. Loss and Damage,	2376237
36. Injuries to Persons,	2517364
37. Clearing Wrecks,	1820083
38. Operating Marine Equipment,	3478023
39. Advertising,	6169942
40. Outside Agencies,	22724123
41. Commissions,	416982
42. Stock Yards and Elevators,	2818646
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	5409274
44. Rents of Buildings and other Property,	1671887
45. Stationery and Printing,	7423789
46. Other Expenses,	378064
TOTAL,	5118549110
GENERAL EXPENSES:	
47. Salaries of General Officers,	1064972
48. Salaries of Clerks and Attendants,	1600796
49. General Office Expenses and Supplies,	1705797
50. Insurance,	8485420
51. Law Expenses,	9682338
52. Stationery and Printing (General Offices),	1633044
53. Other Expenses,	4200796
TOTAL,	3236463
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	16757355
55. Maintenance of Equipment,	17742037
56. Conducting Transportation,	51185491
57. General Expenses,	3236463
GRAND TOTAL,	92250611
PERCENTAGE OF EXPENSES TO EARNINGS—ENTIRE LINE,	
OPERATING EXPENSES—STATE OF FLORIDA,	
Maintenance of Way and Structures,	4834345
Maintenance of Equipment,	5118383
Conducting Transportation,	14527625
General Expenses,	1310857
TOTAL,	26271625
PERCENTAGE OF EXPENSES TO EARNINGS—FLORIDA,	8278

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RENTALS PAID.

A. RENTS PAID FOR LEASE OF ROAD.

NAME OF ROAD.	INTEREST ON BONDS GUARANTEED.	DIVIDENDS ON STOCK GUARANTEED.	CASH.	TOTAL.
Control of Ala. Ry			433000	433000 00
Wilmington Ry. Bridge	3425 00			3425 00
TOTAL RENTS—A. [For entry on page 51 (or 53).]	3425 00		433000	1872500

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY OWNING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
Water Works Track	Montgomery, Ala	Cent. of Ga. Ry	137348	
A. V. & A. R.R.	Sanford "	A. V. & A. R.R.	156100	
TOTAL,				293448
YARDS:				
Ef. Track	Lake City, Fla.	A. C. L. R.R.	20738	
"	Gainesville "	N. F. & Gulf "	4200	
Track to Turn Table	Durham, N.C.	N. & W. "	7800	
TOTAL,			70938	20738
TERMINALS: Freight Depot	Albany Ga	Albany & Nor. Ry.	105000	
Pass. Station	Tallahassee Fla.	Tall. Thom. Co. Ry	7408 00	
Terminal Facilities	Edmund Ga.	Cent. of Ga.	194218	
Terminal & Pass. Facilities	Chattahoochee Fla.	Ga. Ala. Ry.	15176	
" " "	Atlanta "	Ga. Ala. Ry. Co.	1777726	
Freight Station	"	N. C. & St. L. R.R.	1233333	
" "	Montgomery Ala.	" " "	133333	
Columbus " R.R.	Savannah Ga.	Savannah, Fla. & W. R.R.	207288	
Terminal Facilities	Edmund Ga.	Edmund Ry.	81250 00	
Wharfage	Savannah "	Cent. of Ga. Ry.	22333	
TOTAL,				564285
		GRAND TOTAL RENTS—B, [For entry on page 45, item 45.]		3407274

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1903. ITEM.	JUNE 30, 1903. TOTAL.	ASSETS.	JUNE 30, 1904. ITEM.	JUNE 30, 1904. TOTAL.	YEAR ENDING JUNE 30, 1904. INCREASE.	YEAR ENDING JUNE 30, 1904. DECREASE.
	33233200 60	Cost of Road—Page 27,		46803784 67	1357078407	
	6902997 58	Cost of Equipment—Page 29,		7443637 88	540640 30	
	7864283948	Stocks Owned—Page 37,		6658118285		1206165663
	336132 50	Bonds Owned—Page 39,		5327339 23	1768007 73	
		Other Permanent Investments,				
	108 60 000	Leasehold Interest in Wilmington Ry Bridge		108 30 000		
		Lands Owned,				
	2602 88 247	Cash and Current Assets—Page 23,		2278 00 655		324 87 592
		OTHER ASSETS:				
		Equipment Trusts,		812 75 000	812 75 000	
	752 62 751	Materials and Supplies,		697 01 040		55 61 711
		Sinking Fund,				
	1493 61 67	Sundries,		1570 04 804	1420 68 237	
		Profit and Loss—Page 31 (or 33),				
	1257 53 73433	GRAND TOTAL,		1316 24 45263	58 70 71 829	

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COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1903. ITEM.	JUNE 30, 1903. TOTAL.	LIABILITIES.	JUNE 30, 1904. ITEM.	JUNE 30, 1904. TOTAL.	YEAR ENDING JUNE 30, 1904. INCREASE.	YEAR ENDING JUNE 30, 1904. DECREASE.
	6250000000	Capital Stock- -Page 17,		6250000000	✓	
	5514170110	Funded Debt—Page 23,		6151734789	636964679	
	315921579	Current Liabilities—Page 23,		327787038	11865459	
		Real Estate Mortgages,				
	26816587	Accrued Interest on Funded Debt not yet payable,		31637257	4822670	
	14518320	Assessed Taxes not yet payable		32100000	17581680	
	3061821	Reserve for acquiring outstanding Capital Stock of proprietary Companies		9855963		2076858
	10850000	Wilmington Rp. Bridge Bonds		10850000		
		Reserve Funds		51578773	51578773	
	24712795	Sundries		21514290		2998505
	1047488741	Profit and Loss—Page 31 (or 33),		799551532		84793589
	12575373433	GRAND TOTAL,		13102045263	588071829	

Here present statements as follows: 1. All Extensions of Road put in Operation. 2. Decrease in Mileage by Line Abandoned or Line Straightened. 3. All other important Physical Changes. 4. All Leases taken or surrendered. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Bonds issued. 8. All other important Financial Changes.

1 None
2 "
3 "
4 "
5 "
6 "
7 see page 5 - No. 8 page 19
8 Page 19- During the year 5000000 of 3 year 5% Gold Bonds were issued to retire temporary loans and advance funds to the Atlanta & Birmingham R. L. Ry. for completion of road.
Page 49- A new car trust was made during the year.

SECURITY FOR FUNDED DEBT—PAGE 23.

CLASS OF BOND OR OBLIGATION.	WHAT ROAD MORTGAGED. FROM—	TO—	MILES.	AMOUNT OF MORTGAGE PER MILE OF LINE.	WHAT EQUIPMENT MORTGAGED.	WHAT INCOME MORTGAGED.	WHAT SECURITIES MORTGAGED.
1st Mtge S.U.L. 4% Bonds							
Refunding Cal Pac. 5% "							
1st Mtge R.R. & T.R. 6% "							
1st " R. & G. 6% "							
1st " F. & N. 6% "							
1st " R. & A.L. " "	Main Line and		~~235425~~ 255425	~~2273662~~ 2273662	all All	None	Stocks and Bonds of Proprietary Companies
1st " Cen Cent 4% "	Main Line and						
1st " G.C. & N. 5% "	Branches as returned						
1st " G.V. & C. Consol " "	on page 9						
1st " T. C. & P. " "							
1st " " L.G. & W. " "							
1st " " Consol " "							
1st " G.V. & Iron Co. " "							
1st " Iron Bound " "							
Col Trust 3 Yr. "							

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EMPLOYEES AND SALARIES—STATE OF FLORIDA.

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CLASS.	NUMBER.	TOTAL NUMBER OF DAYS WORKED.	TOTAL YEARLY COMPENSATION.	AVERAGE DAILY COMPENSATION.
General Officers,	3	1483	2930430	1973
Other Officers,	8	3511	2574080	733
General Office Clerks,	123	42456	8674963	204
Station Agents,	120	40802	6880312	167
Other Station Men,	256	118142	14332464	121
Enginemen,	118	34608	13843310	400
Firemen,	155	34608	5234173	151
Conductors,	69	21329	6399470	300
Other Trainmen,	228	37936	5972590	115
Machinists,	107	37360	8228235	220
Carpenters,	20	11741	2236722	191
Other Shopmen,	346	102693	15617975	152
Section Foremen,	124	44617	7423763	166
Other Trackmen,	605	188890	17772178	94
Switch Tenders, Crossing Tenders, and Watchmen,	117	43543	6041492	139
Telegraph Operators and Dispatchers,	46	18926	3590921	190
Employees—account Floating Equipment,	6	218	40232	
All other Employees and Laborers,	216	87852	13754125	157
TOTAL (Including "General Officers")—FLORIDA,	2675	884659	141547495	160
Less "General Officers,"	5	1483	2930430	1973
TOTAL (Excluding "General Officers")—FLORIDA,	2670	883174	138617065	157
DISTRIBUTION OF ABOVE:				
General Administration,	138	47452	14177473	299
Maintenance of Way and Structures,	729	233507	25195961	108
Maintenance of Equipment,	477	151734	26082932	172
Conducting Transportation,	1331	451966	76059129	168
TOTAL (Including "General Officers")—FLORIDA,	2675	884659	141547495	160
Less "General Officers,"	5	1483	2930430	1973
TOTAL (Excluding "General Officers")—FLORIDA,	2670	883174	138617065	157
TOTAL (Including "General Officers")—ENTIRE LINE,	9269	3069531	491233225	160

TRAFFIC AND MILEAGE STATISTICS—STATE OF FLORIDA.

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ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	693356			
2. Number of passengers carried one mile,	32450909			
3. Number of passengers carried one mile per mile of road,	43039			
4. Average distance carried,* miles,	4680			
5. Total passenger *revenue*—Page 35,		7600323	2	
6. Average amount received from each passenger,†			10	961 7
7. Average receipts per passenger per mile,†			02	342
8. Total passenger *earnings*—Page 35,		9301601	7	
9. Passenger *earnings* per mile of road,*		12336	3	
10. Passenger *earnings* per train mile,†			75	156
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	1745213			
12. Number of tons carried one mile,	223673273			
13. Number of tons carried one mile per mile of road,	29665			
14. Average distance haul of one ton,* miles,	128 1 7			
15. Total freight *revenue*—Page 35,		20953799	4	
16. Average amount received for each ton of freight,†		1200	66	
17. Average receipts per ton per mile,†			00	937
18. Total freight *earnings*—Page 35,		2174684	89	
19. Freight *earnings* per mile of road,*		28824		
20. Freight *earnings* per train mile,†			139	310
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		3168419	14	
22. Gross earnings from operation per mile of road,*		4202	20	
23. Gross earnings from operation per train mile,†			1340	83
24. Operating expenses—Page 45,		2629162	95	
25. Operating expenses per mile of road,*		3487	00	
26. Operating expenses per train mile,†			111	264
27. Income from operation—Page 31,		539256	19	
28. Income from operation per mile of road,*		715	20	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	5318131			
30. Average number of passenger cars per train mile,*	4 53			
31. Average number of passengers per train mile,	27			
32. Mileage of loaded freight cars—North or East,	9487865			
33. Mileage of loaded freight cars—South or West,	6843475			
34. Mileage of empty freight cars—North or East,	2239645			
35. Mileage of empty freight cars—South or West,	4989846			
36. Average number of freight cars per train mile,*	1728			
37. Average number of loaded cars per train mile,*	1198			
38. Average number of empty cars per train mile,*	530			
39. Average number of tons of freight per train mile,*	14406			
40. Average number of tons of freight per loaded car mile,*	1370			
41. Average mileage operated during year,*	73399			
TRAIN MILEAGE:	MILES.	MILES.		
42. Mileage of revenue passenger trains,	....	999637		
43. Mileage of locomotives employed in "helping" passenger trains,	Cannot state	....		
44. Percentage of "helping" to revenue train mileage,* per cent,	"	....		
45. Mileage of revenue mixed trains,	....	190482		
46. Mileage of revenue freight trains,	....	1172971		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	"	....		
48. Percentage of "helping" to revenue train mileage,* per cent,	"	....		
49. TOTAL REVENUE TRAIN MILEAGE,	....	2362990		
50. Mileage of nonrevenue trains,	....	90758		

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

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ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	2400813			
2. Number of passengers carried one mile,	112364644			
3. Number of passengers carried one mile per mile of road,	43036			
4. Average distance carried,* miles,	4680			
5. Total passenger *revenue*—Page 35,		2631690	88	
6. Average amount received from each passenger,†			109	617
7. Average receipts per passenger per mile,†			02	342
8. Total passenger *earnings*—Page 35,		3254711	64	
9. Passenger *earnings* per mile of road,*		124635		
10. Passenger *earnings* per train mile,†				78780
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	5157025			
12. Number of tons carried one mile,	774491741			
13. Number of tons carried one mile per mile of road,	269630			
14. Average distance haul of one ton,* miles,	150 18			
15. Total freight *revenue*—Page 35,		9117719	82	
16. Average amount received for each ton of freight,†			176	802
17. Average receipts per ton per mile,†			01	177
18. Total freight *earnings*—Page 35,		9269138	72	
19. Freight *earnings* per mile of road,*		355007		
20. Freight *earnings* per train mile,†			196	329
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		12729360	87	
22. Gross earnings from operation per mile of road,*		487541		
23. Gross earnings from operation per train mile,†			135	375
24. Operating expenses—Page 45,		9092506	61	
25. Operating expenses per mile of road,*		348242		
26. Operating expenses per train mile,†			111	127
27. Income from operation—Page 31,		3637054	26	
28. Income from operation per mile of road,*		139299		
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	18656762			
30. Average number of passenger cars per train mile,	433			
31. Average number of passengers per train mile,	27			
32. Mileage of loaded freight cars—North or East,	32852717			
33. Mileage of loaded freight cars—South or West,	23696244			
34. Mileage of empty freight cars—North or East,	7755063			
35. Mileage of empty freight cars—South or West,	17277859			
36. Average number of freight cars per train mile,*	1725			
37. Average number of loaded cars per train mile,*	1178			
38. Average number of empty cars per train mile,*	530			
39. Average number of tons of freight per train mile,*	16406			
40. Average number of tons of freight per loaded car mile,*	1370			
41. Average mileage operated during year,*	261097			
	MILES.	MILES.		
TRAIN MILEAGE:				
42. Mileage of revenue passenger trains,	....	3461347		
43. Mileage of locomotives employed in "helping" passenger trains,	Cannot state	....		
44. Percentage of "helping" to revenue train mileage,* per cent,	" "	....		
45. Mileage of revenue mixed trains,	....	659563		
46. Mileage of revenue freight trains,	....	4061184		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	Cannot State	....		
48. Percentage of "helping" to revenue train mileage,* per cent,	" "	....		
49. TOTAL REVENUE TRAIN MILEAGE,	....	8182099		
50. Mileage of nonrevenue trains,	....	314950		

* Two (2) decimal figures required. † Five (5) decimal figures required.

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FREIGHT TRAFFIC MOVEMENT—STATE OF FLORIDA.

(COMPANY'S MATERIAL EXCLUDED.)

	COMMODITY.	FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		WHOLE TONS.	WHOLE TONS.	WHOLE TONS.	PER CENT.
Products of Agriculture.	Grain,	25606	22006	47612	2.73
	Flour,	11783	12396	24179	1.39
	Other Mill Products,	6310	15001	21311	1.22
	Hay,	7038	14178	21216	1.22
	Tobacco,	910	201	1111	.06
	Cotton,	6383	3987	10370	.61
	Fruit and Vegetables,	37763	23737	61700	3.54
	Melons	21030	601	21631	1.23
	Peanuts	262	95	357	.01
Products of Animals.	Live Stock,	710	882	1592	.09
	Dressed Meats,	61	1112	1173	.07
	Other Packing-House Products,	4574	4829	9423	.54
	Poultry, Game, and Fish,	438	331	769	.04
	Wool,	101	12	113	.01
	Hides and Leather,	763	76	839	.05
Products of Mines.	Bullets & Canon Anthracite Coal,	7965	902	8867	.51
	Bituminous Coal,	2251	12678	14929	.86
	Coke,	695	1361	1756	.11
	Ores,	56	8	64	.01
	Stone, Sand, and other like articles;	14913	8392	13405	.76
	Phosphate	33276	296874	329266	18.87
	Salt	4576	821	5397	.31
Products of Forests.	Lumber, & Staves	370765	202638	573403	32.85
	Logs & Ties	73532	22062	95594	5.45
	Shingles & Slabs	26886	3500	30386	1.74
Manufactures.	Petroleum and other Oils,	6534	4073	10607	.61
	Sugar,	2028	965	2993	.17
	Naval Stores,	127237	38031	165270	9.48
	Iron, Pig and Bloom,	40	401	441	.03
	Iron and Steel Rails,	2201	903	3104	.18
	Other Castings and Machinery,	2818	4073	6891	.39
	Bar and Sheet Metal,	2936	1901	4837	.28
	Cement, Brick, and Lime,	32578	21276	53854	3.08
	Agricultural Implements,	123	220	343	.02
	Wagons, Carriages, Tools, etc.,	306	518	824	.05
	Wines, Liquors, and Beers,	987	5013	6000	.34
	Household Goods and Furniture,	2523	1278	3801	.16
Merchandise,	Furniture	2766	4077	6743	.386
	Cotton Factory Products	329	478	807	.05
	Bagging	124	202	326	.04
		21727	37973	59700	3.43
Miscellaneous:	Other commodities not mentioned above,	25074	35991	61065	3.50
	TOTAL TONNAGE—FLORIDA,	907627	837586	1745213	100.00
	TOTAL TONNAGE—ENTIRE LINE,	3068091	2088934	5157025	100.00

MILEAGE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	253270	1522		5765	240	300	261097		5707	255090
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	37218			1737			38955	2227	9916	29039
TOTAL MILEAGE OPERATED (All Tracks).	290488	1522		7502	240	300	300052	2227	15623	284429

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Virginia	15750						15750			15750
North Carolina	62057	354			240		62551		2708	57843
South Carolina	34088	320		5765		300	34088			34088
Georgia	58584	500		5765		300	65149			64849
Alabama	8160						8160			8160
Florida	74631	768					75399		2999	72400
TOTAL MILEAGE OPERATED (Single Track).	253270	1522		5765	240	300	261097		5707	255090

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Virginia	15750			15750			15750	
North Carolina	62057	354		62411		2708	59603	
South Carolina	34088			34088			34088	
Georgia	58584	500		59084			59084	
Alabama	8160			8160			8160	
Florida	74831	1201		76032		2999	73033	* Includes Turkey Creek Spur, Turkey Creek to Durant 4.86 miles & 2 miles Amelia Beach Line which are leased
TOTAL MILEAGE OWNED (Single Track).	253476	1955		255425		5707	249718	

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MILEAGE—STATE OF FLORIDA.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	74631	768					75399		2999	72400
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,										
TOTAL MILEAGE OPERATED (All Tracks).	74631	768					75399		2999	72400

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OF FLORIDA.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	74631	768					75399		2999	72400
TOTAL MILEAGE OPERATED (Single Track).	74631	768					75399		2999	72400

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OF FLORIDA	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	74831	1201		76032		2999	73033	
TOTAL MILEAGE OWNED (Single Track).	74831	1201		76032		2999	73033	

TAXES AND ASSESSMENTS OF ALL KINDS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE. U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Virginia	2026357			1193509				3219866
North Carolina	12483538				310500			12794038
South Carolina	6773715							6773715
Georgia	13322672							13322672
Alabama	1646790			19211				1666001
Florida	15421195							15421195
TOTAL.,	51874269			1212720	310500			53397489

3. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE. U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
None								
TOTAL,								

OATH.

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State of Virginia }
City } ss:
County of Portsmouth }

WE, THE UNDERSIGNED, J. M. Barr, President,
and T. W. Roby, Comptroller,
of the Seaboard Air Line Railway ~~Company~~,
on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information, and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth, except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said Company during the period for which said return is made.

J. M. Barr
President.
(Or other Chief Officer.)

T. W. Roby
~~Treasurer~~ Comptl.
(Or other Officer in charge of the Accounts.)

SUBSCRIBED AND SWORN TO before me
this 30 day of September, 1904.

John A. Boatwright, Notary Public
My term as Notary Public Expires Feb. 19. 1908

I hereby certify that this is a case in which by the laws of Virginia, no tax is required upon the seal.
Jno. A. Boatwright, Notary Public.

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192-195 And thereupon the said Seaboard Air Line railway to further maintain the issue in its behalf offered in evidence the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, and the same was filed in evidence and is in the words and figures following, to-wit:

196-206 Report of the Railroad Commission.

Office of the Railroad Commission.

STATE OF FLORIDA,
TALLAHASSEE, March 1, 1904.

To his excellency W. S. Jennings, governor of Fiorida.

SIR: The railroad commissioners of the State of Florida have the honor to submit to you herewith, in accordance with the requirements of the laws of Florida, their seventh annual report for the year ending March 1, 1904.

* * * * * * *

207 Joint Rates.

Probably one of the most important acts of the railroad commission during the year was the adoption of order No. 35, amending rule No. 19, governing joint rates.

Rule 19 of the rules and regulations, prescribed by the *the* commission for the transportation of freight, required that the maximum rate charged on shipments originating and terminating within this State which passed over the whole or parts of two or more roads not under the same control, should be the sum of the local rates for the distance hauled over each road.

While the commission could not see their way clear to order into operation a straight mileage rate for shipments passing over two or more roads, still they were of the opinion that the sum of the local rates was unreasonably high, and it was determined to take the matter up with the railroads with a view of making a reduction. A meeting of the commission was held at Jacksonville on November 17th, 1903, and the railroads were given an opportunity to show cause why rule 19 should not be amended to meet the views of the commission. The railroad companies were represented at this meeting by their traffic officials and protested against any reduction of joint rates, but especially requested that if the commission were determined to reduce these rates, that they except classes L, N, O and P, which classes the representatives of the roads contended were already very low.

After due consideration the commission decided to make this exception and issued their order, No. 35, amending rule 19, fixing the maximum rate on all freights, originating and terminating in this State, except classes L. N. O and P, which pass over the whole of two or more roads, not under the same control, at the sum of the local rates, for the distance hauled, less ten per cent.

208–211 This reduction will amount to a large saving in freight charges to the people of the State.

* * * * * * *

212 "Cannot Prevent Advances.

"There is now no way in which these advances can be prevented. If they are just and reasonable they ought not to be prevented. In cases where the reasonableness of charges is fairly in doubt the benefit of that doubt should be given to the railways; but it is impossible to contemplate with indifference the fact that the results of all the recent improvements in transportation facilities is an increase in the transportation charge, or to remember with indifference that this species of property now possesses the power to tax unjustly every other species of property. If these charges are unreasonable, they are a most insidious means of taking unjustly from the general body of the public for the benefit of the few, and some means should be devised by which this can be prevented."

The foregoing from the Interstate Commerce Commission shows that the raising of interstate rates has been general over the whole United States, and not confined to Florida. There has been a very general raise of interstate rates in Florida, which the railroad commissioners have been unable to prevent. Local rates have not been raised, and in many instances during the past year have been materially reduced. The general raise in interstate rates, however, demonstrates that there would have been a raise in local rates if
213 Florida did not have a railroad commission to restrain and prevent it.

* * * * * * *

214 Merchandise Rates.

In our last annual report we stated in detail the steps that were taken by the commission in ordering into effect a reduction on merchandise rates, to be operated by the Seaboard Air Line and Atlantic Coast Line railroads. The commission's order required that this rate should become effective July 1, 1904. At the appointed time the railroads put the rate into operation.

This reduction affected a large part of all the freights hauled by the Seaboard Air Line and Atlantic Coast Line railroads in Florida. For distances of 150 miles and over 140 miles the reduction on such articles as shoes, books, medicines, not otherwise specified, and mowing machines was 10 cents per 100 pounds. On bedsteads and bureaus, 7 cents per 100 pounds; on corn mills and cane mills, hoes and plow handles, 3 cents per 100 pounds; on brick in less than carload quantities, 8 cents per 100 pounds, and on lumber in less than carload quantities, 4 cents per 100 pounds; on bacon and hams packed in wood, 1 cent per 100 pounds. On corn and oats, 2 cents per 100 pounds; on flour, 4 cents per barrel; on household goods and live stock, $3.00 per carload.

The above is given to show how the reduction affects a few staple articles for a certain distance. The reduction is about the same for all distances between points on the lines of the above named railroads, and affects practically all articles in less than carload quantities, and a few in carload quantities.

The above figures show the difference between the rate formerly authorized by the railroad commission, and the one now prescribed by them for the Atlantic Coast Line and Seaboard Air Line railroads. Between some points in the State, the railroads prior to July 1, 1903, operated what are known as special rates; that is, rates less than those allowed by the commission, so that when railroads were required to put down their rates to those of the commission, at those points where the special rates were in force, the reduction was not as much as given above, and in a very
215–245 few instances the rate was actually raised. While the commission regret that it should have been necessary to raise the rate at any point, yet unless there was competition of some kind to justify it, the commission do not consider these special rates to have been just. The courts have decided that competition is a sufficient reason for a special rate, but where there is none, and where conditions are practically the same, the commission is of the opinion that rates between all points the same distance apart should be alike.

The reduction in merchandise rates, while it may seem small when considered in relation to any one article, yet when we consider that it affects every article of clothing, every article of household furniture and everything that we eat, it can readily be seen what a saving it will be in the aggregate to the people of Florida in the course of a year.

* * * * * * *

246 **Order No. 35.**

Railroad Commission, State of Florida.

Amendment of Rule 19, Governing Joint Rates.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 17th day of November, A. D. 1903, for the purpose of considering the adoption of an amendment to rule 19, governing joint rates, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed amendment should not be adopted.

At the request of the railroad companies the hearing was advanced to 2:30 p. m., November 16th, at the board of trade rooms in the city of Jacksonville, at which time the railroads were given an opportunity to be heard, and the commissioners being satisfied that the proposed amendment was reasonable and just;

It is therefore ordered by the railroad commissioners of the State of Florida, that rule 19 of the rules and regulations of the Florida railroad commission, governing the transportation of freight is hereby amended to read as follows:

247–290 "On all shipments of freights except classes L, N, O, & P, not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole or portions of two or more roads, not under the same control, the maximum rate charged on such shipments shall not be greater than the sum of the local rates on such freights less ten (10) per cent. for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination, shall be divided in such proportions between the roads over which such freights pass, so as to give to each road interested in the shipment its local rate less ten (10) per cent. for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point.

On classes L, N, O, & P, the joint rate shall not exceed the sum of the local rates on such freight.

Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest."

It is further ordered, that the amendment to rule 19 set out above be effective on all the railroads and common carriers doing business wholly or in part within the State of Florida on and after January 20th, 1903.

Done and ordered by the railroad commissioners of the State of Florida, in session at their office in the city of Tallahassee, Florida, this 22nd day of December, A. D. 1903.

(Signed) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

292 Gross Earnings from Operation of Railroads in Florida During the Twelve Months Ending June 30, 1903.

Railroads reporting.	Passenger train earnings.					Total freight earnings.	Total other earnings.	Total gross earnings from operations.
	Passenger revenue.	Mail revenue.	Express revenue.	Extra baggage, storage and other items.	Total passenger earnings.			
Atlantic Coast Line	$751,371 39	$143,590 05	$84,761 33	$7,173 81	$986,896 58	$2,246,-89 73	$98,680 85	$3,331,967 16
Alabama and Florida Div., L. & N.	43,813 16	3,750 63	1,350 28	1,026 14	49,940 21	143,965 16	713 18	194,618 55
Carrabelle, Tallahassee and Georgia	20,712 84	3,826 52	3,245 41	290 90	28,075 67	32,480 48	13,723 92	74,280 07
Florida East Coast	788,948 12	80,368 20	158,717 13		1,028,033 45	901,280 18	88,893 53	2,018,207 16	
Gainesville and Gulf	10,545 02	1,813 24	6,510 17		18,868 43	39,004 51	480 00	58,352 94
Georgia, Florida & Alabama	9,356 42	759 05	305 86		10,421 33	15,095 91	297 76	25,815 00
Georgia Southern and Florida	90,782 6-	7,685 34	19,629 73	478 61	118,576 35	118,111 48	18,569 38	255,257 21
Jacksonville and Southwestern	10,126 93	1,50- 00		46 83	11,673 76	191,994 70	1,252 90	204,921 36
Live Oak and Gulf	998 60	757 44			1,756 04	11,570 76	1,396 76	14,723 56
Pensacola Div. of the L. & N.	97,660 05	4,644 60	9,1-5 03	1,939 03	113,359 71	393,790 19	29,363 87	536,513 77
Pensacola and Atlantic Div. L. & N.	145,667 23	13,956 05	9,189 10	3,380 -2	172,192 80	346,199 28	4,488 62	522,88- 70
Seaboard Air Line	681,033 44	68,260 38	80,868 84	9,066 68	8-9,229 34	1,960,731 86	46,843 87	2,846,805 07
South Georgia	11,946 08	1,792 34	137 45		13,875 87	44,650 58	2,443 02	60,969 47
Suwannee and San Pedro	8,730 33	256 23	17 18		9,003 74	30,645 60		39,649 34
Tavares and Gulf	1,242 20	1,258 12	878 69		3,379 01	11,092 25		14,471 26
Valdosta Southern	5,958 -2	6-1 60			6,560 12	13,477 65		2-,037 77
Yellow River	10,538 37	698 82	133 93		11,371 12	76,140 45	1,568 23	89,0-9 80
St. Johns Terminal Co.						8,301 75	74,353 10	82,654 85
Totals	$2,689,4-1 37	$335,518 61	$374,870 13	$23,393 42	$3,423,213 53	$6,584,922 52	$383,068 99	$10,391,205 04

Railroads reporting.	Maintenance of ways and structures.	Maintenance of equipment.	Conducting transportation.	General expenses.	Total operating expenses.	Percentage of operating expenses to gross earnings.
Atlantic Coast Line	$490,299 39	$353,142 77	$1,013,414 89	$93,036 94	$1,949,893 99	58.52
Alabama & Florida Div. L. & N.	5,081 75	3,127 85	7,759 06	424 09	16,392 75	71.50
Carrabelle, Tallahassee and Georgia	15,640 24	12,627 41	25,330 38	10,364 26	63,962 29	86.11
Florida East Coast	344,830 13	193,578 90	732,809 23	80,374 52	1,351,592 78	66.97
Gainesville and Gulf	10,446 26	5,608 52	19,834 37	6,470 79	42,359 94	72.10
Georgia, Florida & Alabama	8,326 73	4,765 44	14,076 41	3,587 18	30,755 76	115.30
Georgia Southern and Florida	54,232 14	65,813 86	101,007 51	14,961 49	236,015 00	92.46
Jacksonville and Southwestern	33,711 50	25,870 80	67,091 57	11,472 25	138,146 12	67.41
Live Oak and Gulf	4,027 23	910 91	4,915 48	1,092 40	10,946 02	74.34
Pensacola Div. L. & N.	120,476 00	62,851 19	176,746 67	10,399 05	370,472 91	69.05
Pensacola and Atlantic Div. L. & N.	117,995 06	74,649 93	157,001 18	15,104 77	364,750 94	69.76
Seaboard Air Line	427,850 16	418,122 10	1,386,641 18	142,513 14	2,375,126 58	83.43
South Georgia	1,640 60	1,020 79	3,795 76	1,292 98	7,750 13	94.00
Suwannee & San Pedro	6,785 59	1,384 15	12,017 05	2,489 38	22,676 17	157.20
Tavares and Gulf	5,360 21	2,868 22	4,801 62	2,478 76	15,508 81	07.08
Valdosta Southern	2,689 59	436 15	4,338 29	2,994 58	10,458 61	52.22
Yellow River	25,891 70	9,838 14	42,869 28	3,931 76	82,530 88	92.75
*St. Johns Terminal Co	9,338 09	5,586 87	32,303 38	5,259 85	52,488 19	63.50
Totals	$1,684,622 37	$1,242,204 00	$3,806,753 31	$408,248 19	$7,141,827 87	

*From Nov. 1st, 1902 to June 30, 1903.

Names of railroads.	Miles of main track.	Miles of yard track and siding.	Miles of branches and spurs.	Total mileage operated.
Atlantic Coast Line	896.58	159.07	332.53	1,388.18
Alabama & Florida	11.85	1.07	.....	12.90
Carrabelle, Tallahassee and Georgia	50.00	3.58	.....	53.58
Florida East Coast	484.95	53.94	.....	538.89
Gainesville and Gulf	48.00	2.00	.....	50.00
Georgia, Florida and Alabama	23.59	1.13	.....	24.72
Georgia Southern and Florida	152.36	17.02	.....	169.38
Jacksonville and Southwestern	85.60	6.00	.....	91.60
Live Oak and Gulf	18.00	.....	2.00	20.00
Pensacola Div. of the L. & N	46.77	29.18	.....	75.95
Pensacola and Andalusia	20.00	1.00	.....	21.00
Pensacola and Atlantic Div. L. & N	160.47	10.03	.....	170.50
Pensacola, Alabama and Tennessee	23.30	2.35	.....	25.65
Seaboard Air Line	746.31	.....	7.68	753.99
South Georgia	12.41	.....	.....	12.41
Suwannee & San Pedro	43.00	.....	.....	43.00
St. Johns Terminal Co	6.39	10.97	.....	17.36
Tallahassee Southeastern	20.00	.....	.....	20.00
Tavares and Gulf	31.64	1.38	.....	33.02
Valdosta Southern	13.00	.....	.....	13.00
Yellow River railroad	25.90	.....	.....	25.90
Total	2,929.10	298.72	342.21	3,561.03

295 And thereupon the said Seaboard Air Line railway announced that it had no further testimony to introduce in the cause, and the State of Florida upon the relation aforesaid, announced that it had no testimony to introduce.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said respondent did, on the 23rd day of December, 1904, during said term, propose this its bill of exceptions, to the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and request him to sign the same, which is done this 23rd day of December, 1904.

[Seal of the Supreme Court of Florida.]

R. F. TAYLOR, [SEAL.]
Chief-Justice of the Supreme Court
of the State of Florida.

296 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one (1) to two hundred and ninety-five (295) inclusive constitute a true copy of all of the proceedings, of all orders made and of all opinions filed by the supreme court of Florida, and a correct transcript of the record of the judgments rendered by the said supreme court of Florida in the case of The State of Florida *ex rel.* W. H. Ellis as attorney general of said State and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, vs. Seaboard Air Line Railway, a corporation under the laws of Virginia and North Carolina, as appear upon the files and records of my office; also the original writ of error from the Supreme Court of the United States to the supreme court of Florida in this cause, and the original citation to the defendant in error and acceptances of service thereof, and the original assignment of errors in the Supreme Court of the United States on said writ of error.

Which said transcript, annexed hereto, together with said original writ of error, original citation and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, the capital, this 29th day of December, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

297 Supreme Court of the United States, October Term, 1905.

SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Plaintiff in Error,
vs.
THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General, *et al.*, Defendants in Error.

No. 155, October Term, 1905.

In pursuance of the rules and practice of this court, it is hereby stipulated by and between counsel of record in this case, that all of the record in the above cause shall be printed except the portions thereof as to which it is hereinafter stipulated that there shall be no printing, to-wit:

First. The petition for the alternative writ of mandamus shall not be printed.

Second. None of the report of the Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and to be found in the bill of exceptions, shall be printed except the following parts thereof, to-wit:

Print pages 1, 9A, 9, 11, page 17 and explanatory remarks to be found on page 16, and to follow page 17 immediately, page 19, page 21 and explanatory remarks on page 20, to follow page 21 immediately, pages 23, 25, 27, 29, 31 and explanatory remarks on page 30, to follow page 31 immediately, pages 33, 35, and 37 and explanatory remarks on page 36 to follow page 37 immediately, page 39 and explanatory remarks on page 38 to follow page 39 immediately, pages 41, 43, 45, 47, 49, 51, 53, 57, 59, 61A, 61, 63, 67, 67B, 79 and 81.

Third. None of the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, to be found in the bill of exceptions in said cause, shall be printed, except that the following parts thereof shall be printed, to-wit:

All of page 5, down to but excluding the heading "Complaints." All of pages 16 and 17, beginning with the heading "Joint rates" on page 16, and ending with the word "State," at the end of
298 the second line on page 17. That part of pages 21 and 22, commencing with the heading "Can not prevent advances," on page 21, and ending with the word "it," at the end of the first line on page 22. All of page 23, commencing with the words "Merchandise rates," and all of page 24, down to and including the word "year," at the end of the second paragraph on said page 24. All of pages 56 and 57, commencing with the heading "Order No. 35," on page 56, down to the end of page 57. The three tables of statistics,

including such heading, to be found at the end of such report under the heading "Statistics."

GEO. P. RANEY,
Attorney for Plaintiff in Error.
W. H. ELLIS,
Attorney-General,
J. M. BARRS,
Special Counsel,
Attorneys for Defendants in Error.

Nov. 14th, 1905.

299 [Endorsed:] File No. 19591. Supreme court U. S. October term, 1905. Term No. 155. Seaboard Air Line Railway, P. E. vs. The State of Fla. *ex Rel.* W. H. Ellis att'y gen'l, *et al.* Stipulation to omit parts of record in printing. Filed Nov. 20, 1905.

Endorsed on cover: File No. 19,591. Florida supreme court. Term No. 155. Seaboard Air Line Railway, plaintiff in error, vs. The State of Florida upon the relation of W. H. Ellis, as attorney general of said State, *et al.* Filed January 6th, 1905. File No. 19,591.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 11.

SEABOARD AIR LINE RAILWAY, PLAINTIFF IN ERROR,

vs.

THE STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY GENERAL OF SAID STATE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED JANUARY 6, 1905.

(19,592)

(19,592)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 156.

SEABOARD AIR LINE RAILWAY, PLAINTIFF IN ERROR,

vs.

THE STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY GENERAL OF SAID STATE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1-10 STATE OF FLORIDA:

In the Supreme Court.

Be it remembered that heretofore, to-wit: on the 7th day of March, 1904, the same being a day within the January term, 1904, of the supreme court of the State of Florida, The State of Florida *ex rel.* W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, by its attorneys filed in the office of the clerk of the supreme court of the State of Florida its petition for an alternative writ of mandamus, which said petition is in the words and figures following, to-wit:

* * * * * * *

11 And afterwards, on the 8th day of March, A. D. 1904, comes the plaintiff, by its attorneys, and files the following motion for an alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina.

Comes now the relators and present to the court a petition, and move the court that an alternative writ of mandamus do issue as prayed in said petition, returnable as the court may direct.

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA,
W. H. ELLIS, Attorney General,
J. M. BARRS, Special Counsel,
By W. H. ELLIS, Attorney General.

And on the same day the supreme court made an order that an alternative writ of mandamus issue herein directed to the respondent, returnable on Tuesday, the 19th instant, which order is in the words and figures following, to-wit:

12 In Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
SEABOARD AIR LINE RY., Defendant.

Upon consideration of the motion and petition herein, it is ordered that an alternative writ of mandamus do issue herein directed to the respondent, returnable on Tuesday, the 19th instant, in conformity to the said motion and petition filed.

And afterwards, to-wit: on the 10th day of March, A. D. 1904, an alternative writ of mandamus was issued herein in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina. (#2.)

13 The State of Florida to the Seaboard Air Line Railway:

Whereas, by a petition caused by Jefferson B. Browne, John L. Morgan and R. Hudson Burr as the railroad commissioners of the State of Florida to be filed in this court, in the name of The State of Florida, by W. H. Ellis as attorney general of the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, it has been made to appear:

1. That the Seaboard Air Line railway, a railroad company, is a corporation organized under the laws of the States of Virginia and North Carolina, and now controls and operates, and since the 8th day of October, A. D. 1903, has controlled and operated divers lines of railroads, which are wholly or in part in the State of Florida; and that the said Seaboard Air Line railway is now, and since the 8th day of October, A. D. 1903, has been a common carrier engaged in the transportation of freight and passengers for hire over its said lines of railroads from points in Florida to points in Florida.

2. That, on the 8th day of October, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, by an order duly adopted by them, gave notice in accordance with the laws of Florida to all the railroad companies

and common carriers doing business wholly or in part within the State of Florida, that there would be a meeting of said railroad commissioners, at their office in the city of Tallahassee, Florida, on the 16th day of November, 1903, at 9:00 o'clock a. m., when they proposed to adopt a freight rate of one cent per ton per mile on phosphate from points within the State of Florida to points within the State of Florida, except to such points where the proposed rates would raise the rate then in force, and that to such points the
14 rates then in force should remain the same, at which time the railroad companies and common carriers doing business wholly or in part within the State of Florida, would have an opportunity to be heard, and to show cause, if any they had, why the proposed rates should not be adopted.

3. That thereafter the said railroad commissioners changed the place of meeting from Tallahassee, Florida, to Jacksonville, Florida, of which change all the railroad companies and common carriers doing business wholly or in part within the State of Florida were duly notified.

4. That, in accordance with said notice, the said railroad commissioners met at the board of trade rooms in the city of Jacksonville, Florida, on the 16th day of November, 1903, at which time and place the said railroads and common carriers were given an opportunity to be heard, and answers were then and there filed by the Atlantic Coast Line railroad, the Seaboard Air Line railway and the Jacksonville and Southwestern railway, and request was made by them that they, and each of them, be given until November 28th, 1903, in which to file their briefs and supplemental briefs, which request was granted, and the briefs of each of said railroad companies having been received by the said commissioners, and having been duly considered by them in connection with the proposed reduction in phosphate rates, and the said commissioners, on the 17th day of December, A. D. 1903, in session at their office at Tallahassee, Florida, being satisfied that some of the then present freight rates on phosphate from points in Florida to points within the State of Florida were unreasonably high and should be reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State, should not exceed one cent per ton per mile provided, however, that where the rate of one cent per ton per mile would raise any rate then in operation, the said rate of one cent per ton per mile should not be effective, but that the rate as then charged by the said railroad companies was then and there adopted in and by said order
15 of the said railroad commissioners as their rate between such points.

4*a*. That the said commissioners, in and by said order, then and there further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within

the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the said railroad commissioners, in and by their said order, then and there further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19 governing joint rates were thereby modified so that the initial road should have the right to deliver shipments to the delivering road at such junctional point within the State of Florida as it should desire, provided, however, that the rate charged for such shipment should be based upon the shortest mileage between the point of shipment and point of destination.

6. That the said railroad commissioners, in and by their said order, then and there further ordered that the said rate therein prescribed, should be effective on and after the 15th day of January, A. D. 1904.

A duly certified copy of the said order and the said rule 19 are hereto attached marked "Exhibit A" and "Exhibit B," respectively, and made a part hereof to the same extent as if fully set out herein.

7. That the said railroad commissioners, prior to the 15th day of January, A. D. 1904, furnished all railroads doing business within said State with notice of the changes and revisions adopted in and by said order, which said notice stated the time when said changes and revisions should go into effect.

16 8. That, although the said Seaboard Air Line railway was furnished with notice of the changes and revisions of phosphate rates, as aforesaid, it has not obeyed said order and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order and contrary to the laws of Florida now charges, and since the 15th day of January, 1904, has charged for the transportation of phosphate over its said lines of railroads and railroads under its control or management from points in Florida to points in Florida rates in excess of the rates prescribed in and by said order, and the said Seaboard Air Line railway has refused and still refuses to otherwise comply with all and singular the aforesaid and other commands and directions of said order of the said railroad commissioners, made on the 17th day of December, A. D. 1903.

9. And it has been made to further appear that the said railroad commissioners, as aforesaid, constituting the railroad commission of the State of Florida, and the people of the State of Florida, are entirely without remedy in the premises, unless it be afforded by the interposition of this honorable court through a writ of mandamus.

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Seaboard Air Line railway, to forthwith put into operation and effect over all

your lines of railroads and all the railroads which are under your management or control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D., 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State, and do command you to further comply with all the commands and directions of said order of the said railroad com-
17 missioners, as contained in a duly certified copy of said order which is hereto attached and marked "Exhibit A" and made a part hereof to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order as long as the same shall be in force; or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and the seal of the said court, at Tallahassee, the capital, this 8th day of March, A. D. 1904.

[SEAL.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points Within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate now in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted;

18 In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to

be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State are unreasonably high, and should be reduced and based upon a mileage rate:

It is, therefore, ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida, passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have
19 the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the

railroad commissioners of the State of Florida on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand, this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

20 EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad comapnies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

21 This writ came to hand this March 10th, 1904, and in the absence of the president and vice president, or the head of the corporation, the Seaboard Air Line railway, and in the absence of

the cashier and treasurer and secretary and general manager and any director of said Seaboard Air Line railway, a corporation, this writ was served upon E. D. Raney, a business agent of the said Seaboard Air Line railway, a corporation, by delivering a copy of said writ to the said E. D. Raney, who is a resident of Leon county, on March 10th, 1904, in Leon county, Florida.

CHARLES HOPKINS,
Sheriff of the Supreme Court of Florida.

And afterwards, to-wit, on the 29th day of March, A. D. 1904, the defendant filed its demurrer to the alternative writ of mandamus, which demurrer is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of the State of Florida, etc.,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, etc.

Now comes the defendant, Seaboard Air Line Railway, a corporation, and says that the alternative writ is bad in substance, and insufficient in law to be answered.

The substantial matters of law to be argued are as follows:

1. Such writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, alleged by said alter-
22 native writ to have been made by the railroad commissioners of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its line of railroad from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order of December 17th, 1903.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there has been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad

ommission of the State of Florida, is a mere statement of opinion nd conclusions as a matter of law of the State of Florida and re- ators of a violation by defendant of said order of December 17th, 903, alleged by said alternative writ to have been made by the ailroad commission of the State of Florida, and fails to set up any act or facts upon which this honorable court can form an opinion s to whether or not there has been a violation of such order of De- ember 17th, 1903, by this defendant in any case or cases, instance r instances of a shipment or shipments of phosphate from any one oint in Florida to another point in the State of Florida, falling within the provisions of said order.

3 5. The said writ fails to inform the defendant of the specific instance or instances in which the said order of December 7th, 1903, has been violated by this defendant by charging a higher ate than that prescribed by said order, upon shipments of phos- hate from a point in Florida to a point in Florida.

6. The said alternative writ is otherwise and in all respects in- afficient in law to be answered unto by this defendant.

GEO. P. RANEY,
Attorney for Defendant.

I hereby certify that I am attorney in the above cause for the bove named defendant, and that I believe the above demurrer to e well founded in law.

GEO. P. RANEY,
Division Counsel, Seaboard Air Line Railway for Florida.

STATE OF VIRGINIA, }
City of Portsmouth. }

Personally appeared J. M. Barr, and he being duly sworn, de- oses and says that he is president and general manager of The Seaboard Air Line Railway, the defendant above named, and that he above demurrer is not interposed for the purpose of delay.

J. M. BARR.

Sworn to and subscribed before me, this the 26th day of March, A. D. 1904.

Witness my hand and official seal.

[SEAL.] JNO. H. BOATWRIGHT,
Notary Public for City of Portsmouth, State of Virginia.

My term as notary public expires Feb. 19, 1908.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

24 JNO. H. BOATWRIGHT,
Notary Public.

And afterwards, to-wit, on the 26th day of April, A. D. 1904, the supreme court made an order allowing an extension of time for filing briefs, which order is in the words and figures as follows, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, Defendant. } (No. 2.)

This cause is this day submitted to the court upon oral argument by counsel for the respective parties, on the demurrer of the defendant to the alternative writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof. Upon application of counsel for the defendant for an extension of time for filing briefs, it is ordered that counsel for both parties be allowed until next Tuesday, May 3rd, to file briefs.

And afterwards, to-wit: on the 28th day of June, A. D. 1904, the supreme court of Florida filed with the clerk of said court its opinion in this cause, which opinion is in the words and figures as follows, to-wit:

25 In the Supreme Court of Florida, Division A, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel of the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant. } No. 1.

SAME PLAINTIFF
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the State of Virginia and North Carolina, Defendant. } No. 2.

SAME PLAINTIFF
vs.
JACKSONVILLE & SOUTHWESTERN RAILROAD COMPANY, a Corporation, Defendant. } No. 3.

26 Statement.

The above mentioned three cases against three separate corporations are founded upon alternative writs and demurrers thereto, in

the same language and terms, and the opinion in the first case will be considered as applying to each of them.

Upon the petition of the relators an alternative writ of mandamus issued out of this court on March 7, 1904, alleging in substance:

1. The incorporation of the respondent and that since the eighth of October, A. D. 1903, it has controlled and operated as a common carrier divers lines of railroads wholly or in part within the State of Florida, and has been engaged in the transportion of freight and passengers over its lines, from points in Florida to points in Florida.

2. That the State railroad commissioners, pursuant to notice of their intention to adopt a freight rate of one cent per ton per mile on phosphate from points within Florida to points within Florida (except points where the proposed rate would raise the rates then in force, and that to such points the rates then in force should remain the same), met in the city of Jacksonville, on November 16, 1903, at which place and time the respondent and other railroads, pursuant to said notice, were given an opportunity to show cause, if any they had, why the proposed rate should not be adopted.

3. That at the said time and place, respondent and other railroads filed answers, and by their request, were given until November 28, 1903, to file their briefs and supplemental briefs, which briefs were filed and considered by the railroad commissioners, and afterwards, on December 17, 1903, the said commissioners, in session at Tallahassee, Florida, being satisfied that some of the then existing freight rates on phosphate from points in Florida to points within the said State, were unreasonably high, and should
27 be reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in Florida to points within said State, should not exceed one cent per ton per mile, provided, that where the rate of one cent per ton per mile would raise any rate then in operation, that said rate of one cent per ton per mile should not be effective, but that the rate as then charged by said railroad companies was then and there adopted in and by said order of the said railroad commissioners, as their rate between such points.

4. That the said railroad commissioners then further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the railroad commissioners then further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida the provisions of rule 19, governing joint rates, are modified, so that the initial road should have the right to deliver shipments to the delivering road at such junctional point, within the State of Florida as it might desire, provided, how-

ever, that the rate charged for such shipment should be based upon the shortest mileage between the points of shipment and the point of destination.

6. That the said railroad commissioners then further ordered that the said rate therein prescribed should be effective on and after the 15th day of January, A. D. 1904. Copies of the order and of rule 19, are attached as parts of the writ, and marked Exhibits "A" and "B."

28 7. That the railroad commissioners prior to the 15th day of January, A. D, 1904, furnished all railroads doing business within the State with notice of the changes and revisions adopted by the said order, stating the time when the said changes and revisions would go into effect.

8. That although the Atlantic Coast Line Railroad Company was furnished with notice of the changes of phosphate rates as aforesaid, it has not obeyed said order, and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order, and contrary to the laws of Florida, now charges, and since the 15th day of January, A. D. 1904, has charged for the transportation of phosphate over its said lines of railroads, and railroads under its control or management, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and the said Atlantic Coast Line Railroad Company has refused, and still refuses, to otherwise comply with all and singular the aforesaid and other commands and directions of the said order of the said railroad commissioners made on the 17th day of December, A. D. 1903.

9. This, the ninth, paragraph concludes: "Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Atlantic Coast Line Railroad Company, to forthwith put into operation and effect over all your lines of railroads, and all the railroads which are under your management and control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D. 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State of Florida to points within said State, and do command you further to comply with all the commands and directions of said order of the said railroad commissioners, as contained in a duly certified copy of said order,

29 which is hereto attached and marked Exhibit A and made a part hereof, to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order, as long as the same shall be in force, or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock, a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ."

"EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points Within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted:

In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State, are unreasonably high, and should be reduced and based upon a mileage rate:

It is therefore ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents

per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

31 It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest:

R. C. DUNNE, Secretary.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the railroad commissioners of the State of Florida, on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida."

"EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be

32 divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled,

conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad companies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

The respondent filed the following demurrer to the foregoing alternative writ: "Now comes the defendant, The Atlantic Coast Line Railroad Company, a corporation, and says that the alternative writ is bad in substance and insufficient in law to be answered.

The substantial matters of law intended to be argued are as follows: 1. Said writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, as alleged by said
33 alternative writ to have been made by the railroad commission of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its lines of railroad from points in Florida to points in Florida.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there had been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alterna-

tive writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad commission of the State of Florida, is a mere statement of opinion and conclusion as a matter of law of the State of Florida and relators of a violation of law by defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida, and fails to set up any fact or facts upon which this honorable court can form an opinion as to whether there has been a violation of such order of December 17th, 1903, by this defendant in any case or cases, instance or instances, of a shipment or shipments of phosphate from any point in Florida to another point in the State of Florida, falling within the provision of said order.

5. The said writ fails to inform the defendant of the specific instance or instances in which said order of December 17th, 1903, has been violated by this defendant by charging a higher rate
34 than that prescribed by said order upon shipments of phosphate from a point in Florida to a point in Florida.

6. That said alternative writ is otherwise and in all respects insufficient in law to be answered unto by this defendant.

JOHN E. HARTRIDGE,
Attorney for Defendant."

HOCKER, *J.* (*after stating the facts*):

It will be observed that the first, second, third, fourth and fifth grounds of demurrer present in various forms of statement the proposition that the alternative writ is bad and insufficient in law, because the recitals of the writ alleging a refusal of the respondent to put into effect the rates on phosphate prescribed by the order of the railroad commissioners are wanting in certainty, and amount simply to a conclusion of law. It is insisted that instances of violation should be set forth. This proceeding is instituted at the instance of an official body, the railroad commissioners, to compel the respondent to put into effect and practical operation the schedule of rates and system of rating prescribed in the order, and is not intended to compel the company to carry any particular phosphate for any particular individual. The writ recites that the order became effective on the fifteenth of January, 1904, and that respondent has not put into effect the schedule of rates prescribed therein, but refuses so to do, and in violation and disregard of the prescribed rates, now charges, and since the 15th day of January, 1904, has charged for the transportation of phosphate over its lines of railroad, and railroads under its control and management from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and it has refused and still refuses to comply with
35 all and singular the aforesaid, and other commands and directions of the said order of the railroad commissioners made

on the 17th day of December, A. D. 1903. We think the recitals clearly import a refusal to comply with the said order in each and all of its directions—in other words, a refusal to comply with the schedule of rates as a system of rates. The allegation that the respondent now charges, and since the 15th day of January, 1904, has charged for transportation of phosphate rates in excess of the prescribed rates, simply accentuates and points out the particular thing which respondent is alleged to be doing, signifying its refusal to put into effect the prescribed schedule of rates and its violation and disregard thereof. The recitals of this writ thus used to compel the observance of a system or schedule of rates on phosphate are of similar import to those employed by the distinguished pleader who drew the writs in the unreported case of State *ex rel.* Attorney-General v. Florida Southern Railway Company, which was presented to this court in December, 1888, to compel the observance of the schedule of rates prescribed by the railroad commission on oranges. The writ in that case was subjected to the most ingenious and rigorous criticism, but was held good by this court. The argument that if instances of violation were cited in the writ such instances could probably be considered so as to show that such instances did not come under the jurisdiction of the State railroad commission, is not constraining. Our opinion is that the question whether this or that case can be used in support of a charge of a total disregard and violation of the order of the commission, is one involving the relevancy, competency and probative force of evidence, and not one of pleading.

It is contended on several grounds that the recitals of the eighth paragraph of the writ taken separately, amount to no more than conclusions of law. We think, however, that this paragraph is to be considered as a whole, and, being so considered, is not substantially indefinite or uncertain. It is one sentence, the several recitals of which are connected by copulative conjunctions, and each
36 separate allegation is to be construed by its contextural connections. Thus considered it charges a general violation of the duty of the respondent in refusing to put the prescribed rule into practical operation, and by way of re-enforcement of this charge, that it is, and has been charging rates in excess of those prescribed. Certainty of allegation is requisite, but if the alternative writ states the facts on which the demand is based with sufficient precision to express the right of relator and the duty of the respondent in such a manner that the ordinary mind may easily apprehend them, we think this is all the certainty required to defeat a demurrer. Central D. & P. Tel. Co. v. Commonwealth, 114 Pa. St., 592, 7 Atl. Rep. 926; Fisher v. Mayor, &c., of Charleston, 17 West Va. 628; 13 Ency. Pl. & Pr., 674–5 and notes.

It is also objected that the writ does not recite the existence of phosphate, nor any tender of the same for transportation, nor refusal to transport any specific tender of phosphate at the prescribed rates. We do not think this is a tenable position on this demurrer. It is

true, that generally material facts should be alleged by direct averment, and not by inference, but unequivocal averments will support implications that necessarily result, at least, on general demurrer. 6 Ency. Pl. & Pr., 269; State *ex rel.* Attorney-General v. Johnson, 35 Fla. 2. Special demurrers, which at common law reached defects of formal statement, are abolished in this State. This court, like other courts, will take judicial notice of matters of common knowledge, and, therefore, knows that phosphate is produced in some portions of Florida, and is an article of transportation. The allegation that excessive charges are made for the transportation of phosphate necessarily implies that phosphate is tendered for transportation, and is transported, for if it were not actually tendered and offered for transportation, it could not be transported.

It is objected that the phrase "put into effect" and the word "charge," used in the eighth paragraph, and the mandatory clause are indefinite, and indeterminate in their meaning. To put
37 a rate into effect is to charge and receive that rate when the article to which it applies is transported; in other words, to give it practical operation. To charge is to "lay on," or "impose" as a load, tax or burden, to fix or demand a price for a thing or service. The phrase and word are of the most common use, and we fail to see how there can be any substantial difficulty in discovering their meaning.

We might close the opinion at this point, but the discussion both orally and in the briefs has taken a wider range than is indicated in any ground of the demurrer. It is insisted that the order of the railroad commissioners is void, because it prescribes a less rate than one cent a ton per mile, where at the date of the order, a less rate was then being charged, which in effect amounts to a discrimination in favor of certain individuals, classes or communities and which is prohibited by the railroad commission act, chapter 4700, Laws of 1899. We discover nothing in the act or the order properly construed, which sustains this contention. Railroads and common carriers, it is true, are inhibited from making unjust discriminations in rates (sec. 4), but we discover nothing in the act which limits the discretionary powers of the railroad commission to make reasonable and just rates. It does not necessarily follow that in prescribing a particular rate lower than the general one, the commission have violated their authority. There may be circumstances which would justify such lower rates, and the act itself (sec. 8) makes the rates and regulations prescribed by the commission *prima facie* reasonable and just. The proviso of the order properly construed applies only to general rates to the public, and not to special rates given by railroad companies to individuals, if any such were given, as contended by the defendant.

It is further contended in argument that mandamus does not lie to enforce a continuing duty. We do not think this a sound contention. In the case above cited, as also in the case of State *ex rel.* Attorney-General v. Pensacola & A. R. Co., 27 Fla. 403, 9 South.

Rep. 89, and State *ex rel.* Attorney-General v. Jacksonville
38 Terminal Company, 41 Fla. 377, 27 South. Rep. 225, some portions of the duties enforced by mandamus were of a continuing nature. See also Attorney-General v. City of Boston, 123 Mass. 460; People *ex rel.* Jackson v. Suburban R. Co., 178 Ill. 574, 53 N. E. Rep. 349; People v. New York Central and Hudson River R. R. Co., 28 Hun. 543, and particularly Goodel v. Woodbury, 71 N. H. 378, — Atl. Rep. —; Town of Mason v. Railroad Co., 51 West Va. 183, — S. E. Rep. —. And there is no doubt that mandamus is an appropriate remedy to compel observance of a valid regulation of the railroad commissioners imposing specific public duties upon railroad companies. 2 Elliott on Railroads, sections 697 *et seq.*; State v. Fremont, E. & M. V. R. Co., 22 Neb. 313, 35 N. W. Rep. 118; City of Potwin Place v. Topeka Ry. Co., 51 Kan. 609, 33 Pac. Rep. 309. See also, State *ex rel.* City of Bridgeton v. Bridgeton & M. Traction Co., 62 N. J. L. 592, 43 Atl. Rep. 715.

It is contended that the mandatory clause of the writ is broader in its terms and meaning than its recitals will support. We do not regard this as a sound contention. We deem it proper to say here, in order to prevent misapprehension, that we regard the recitals and mandatory part of the writ as embracing but one subject and purpose, viz: as reciting a total violation in each and all its directions of the order of the railroad commissioners, and as seeking to compel respondent to observe and put said order into effect and practical operation as a totality. Upon a proper issue joined if the relator does not show that respondent was and is violating and refusing to observe the several rates which make up the whole schedule, the question would arise whether a peremptory writ could be issued. State *ex rel.* Moody v. Call, 39 Fla. 165, 22 South. Rep. 266; Florida, C. & P. R. Co. v. State *ex rel.* Town of Tavares, 31 Fla. 482, 13 South. Rep. 103; Tapping on Mandamus, top page 369 (marg. *324); Haskins v. Board of Supervisors of Scott Co., 51 Miss. 406; Fisher v. Mayor, &c., of the City of Charleston, 17 West Va. 628.

39 The demurrer is overruled and the respondent is required to file its return showing obedience to the mandate of the alternative writ, or cause why it is not obeyed, on or before the 12th day of July, A. D. 1904.

Taylor, C. J., and Cockrell, J., concur.

Carter, P. J., and Shackleford and Whitfield, JJ., concur in the opinion.

40 And thereafter on the same day, the 28th day of June, A. D. 1904, the supreme court entered its judgment ordering that the demurrer be overruled, and requiring the respondent to file its return showing obedience to the mandate of the alternative writ, which judgment is in the words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

41 THE STATE OF FLORIDA *ex Rel.* W. H. Ellis, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel of the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Defendant.
} Mandamus. (#2.)

This cause coming on to be heard upon the demurrer of the respondent to the alternative writ of mandamus, and having been submitted on briefs and oral argument of counsel for the respective parties, and the court having considered the same and being now advised of its judgment in the premises, it is considered, ordered and adjudged that the said demurrer be and the same is hereby overruled, and the respondent is required to file its return showing obedience to the mandate of the alternative writ of mandamus, or cause why it is not obeyed, on or before Tuesday, the 12th day of July proximo.

The opinion of the court in this cause was this day read by Mr. Justice Hocker, and ordered to be filed.

And afterwards, to-wit, on the 5th day of July, A. D. 1904, the respondent filed a motion for an extension of the time heretofore allowed to file its return, which motion is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida.

STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General, *et al.*
vs.
SEABOARD AIR LINE RAILWAY COMPANY.
} Motion.

42 Now comes the above entitled respondent by Geo. P. Raney, its attorney, and moves the court to extend the time heretofore allowed said respondent to file its return or answer to the alternative writ until the first Monday in August, 1904.

GEO. P. RANEY,
Attorney for Respondent.

And on the same day, to-wit, the 5th day of July, A. D. 1904, counsel for the respondent filed his affidavit in support of the motion to extend the time heretofore allowed to file return or answer to the alternative writ, which affidavit is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.*
vs.
SEABOARD AIR LINE RAILWAY. } Mandamus.

STATE OF FLORIDA,
Leon County.

Personally appeared Geo. P. Raney, and he being duly sworn deposes and says that he is division counsel of the above named defendant for the State of Florida, and, as such, is in charge of the defense of said defendant to the above writ of mandamus; and that it is the purpose of said defendant in good faith and by advise of counsel to prepare and file herein an answer to the alternative writ of mandamus herein, and to set up and state therein the facts relied upon by defendant as causes why said alternative writ should not be made peremptory; that this affiant believes that the facts intended to be set up and stated in said answer by said respondent constitute a good cause why
43 said peremptory writ should not be granted, and that it is necessary for the defense of this case and the protection of the legal rights of defendant that such answer should be filed, and that it would be a wrong and hardship upon it to make said alternative writ peremptory without giving respondent reasonable and sufficient time to prepare and file its answer herein. That the first notice received by the respondent of the overruling of its demurrer to said writ was by a letter from the clerk of the above court to affiant, received on the 29th day of June, 1904; that affiant immediately applied to the clerk of the above court for a copy of the opinion, and that such copy was not received by affiant until the afternoon of July 1st, 1904; that since the receipt of such notice and copy of opinion the defendant has been busily and constantly engaged in the preparation of other business requiring immediate attention, and, among other things, the preparation of a brief in a case in the circuit court of the United States for the northern district of Florida. That the proper preparation of the defense of the defendant requires conference with the general officers of the respondent company now in Portsmouth, Virginia, and the obtaining of information from them, and conference with other persons, and that such conferences can not be had immediately owing to the distance from affiant of such officers; that the proper preparation of respondent's answer will, in the opinion of affiant, require much more time than was allowed by the order of the court overruling the demurrer; and that affiant believes that it should be allowed until the first day of August next for answering, and that this will not give respondent any more than a reasonable and requi-

site time for properly preparing the answer of defendant to such alternative writ of mandamus.

GEO. P. RANEY.

Sworn to and subscribed before me this 5th day of July, 1904.
[SEAL.]
B. B. WILSON,
Clerk Supreme Court.

44 And on the same day, to-wit: on the 5th day of July, A. D. 1904, the supreme court made an order extending the time for the defendant to file its answer, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant.

This cause coming on to be heard upon motion of counsel for the defendant for an extension of time until the first Monday in August proximo in which to file its answer to the alternative writ of mandamus herein; and upon consideration thereof it is ordered that the time for filing such answer be extended until Tuesday, the 19th instant.

And afterwards, on the 19th day of July, A. D. 1904, the defendant filed its return to the alternative writ of mandamus, which return is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, &c.

45 The Return of The Seaboard Air Line Railway, a Corporation, the Defendant, to the Alternative Writ of Mandamus in the Above Cause.

The Seaboard Air Line Railway, defendant aforesaid, for return to said alternative writ of mandamus says:

I.

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phos-

phate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines of line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus.

II.

And for a further and additional return to such writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines or line of railroad from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus; and defendant further says that there has been no tender or offer to respondent of any phosphate for transportation by it on a shipment thereof from a point in Florida to a point in Florida since the said 15th day of January, 1904.

III.

And for a further and additional return to said writ, respondent says:

46 That it is not true that this respondent has, since the 15th day of January, 1904, charged for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission.

IV.

And for a further and additional return to said writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission; and defendant further says that there has been no

tender or offer to respondent of any phosphate for transportation by it, on a shipment thereof from a point in Florida to a point in Florida since the said 15th day of January, 1904.

V.

And for a further and additional return to said alternative writ of mandamus, respondent says:

That the tariff, rate and schedule of rates prescribed by the order of the railroad commission of the State of Florida, mentioned in the alternative writ, and bearing date December 17th, 1903, does not give to the defendant a reasonable and just tariff of rates for
47 the shipments covered thereby; and that such tariff of rates with the tariff of freight and passenger rates now in operation over the lines of railroad of the respondent, Seaboard Air Line Railway, are not sufficient to afford, and do not afford, the respondent a reasonable income from the operation of its said lines, or, in fact, any net income from the operation of said lines of railroad in the conduct of business of said lines local to the State of Florida including the earnings from said lines of railroad in Florida from interstate and foreign commerce over and above the reasonable cost of constructing, maintaining and operation said railroad; and that the enforcement of said rates of said railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the law, contrary to the guarantees of the Constitution of the United States and the amendments thereto.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY, Att'y.

GEO. P. RANEY,
Att'y for S. A. L. Ry., Def't.

STATE OF VIRGINIA, }
City of Portsmouth. }

Before me, Jno. H. Boatwright, a notary public in and for the city of Portsmouth (Va.), personally appeared J. M. Barr, and he being duly sworn deposes and says that he is president and general manager of the Seaboard Air Line Railway, a corporation under the laws of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, respondent in the above proceedings; and that the statements made in the above return are true.

J. M. BARR.

Attest:
[SEAL.] ROB'T L. NUSS, Ass't Sec'y.

Sworn to and subscribed before me this 16th day of July, 1904.
[SEAL.] JNO. H. BOAT VRIGHT,
Notary Public in and for the
City of Portsmouth, Virginia.

My term as notary public expires Feb. 14, 190–.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

JNO. H. BOATWRIGHT,
Notary Public.

And afterwards, to-wit: on the 21st day of July, A. D. 1904, the supreme court made an order that the plaintiff plead to the return of the defendant, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. CO., Defendant.

48 The defendant having filed its return to the alternative writ of mandamus issued herein within the time heretofore fixed by the order of the court, it is ordered that the plaintiff plead to such return on or before Tuesday, the 26th instant.

And afterwar-s, to-wit: on the 26th day of July, A. D. 1904, the plaintiff makes a motion to quash the return of the respondent to the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, a Corporation, etc.

Motion of the Plaintiff to Quash the Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

And now comes the plaintiff in the above entitled cause by W. H. Ellis, as attorney general for the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, and moves the court to quash the return of the respondent to the said alternative writ of mandamus, and to issue a peremptory writ of mandamus herein; and for the grounds of its said motion the plaintiff shows the court the following:

49 1. Said return is frivolous and evasive.

—. The defenses set up in said return are contradictory and inconsistent.

3. Said return is argumentative and stated conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why the peremptory writ should not issue.

WM. H. ELLIS,
Attorney General of the State of Fla.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Florida.

And upon the same day, to-wit, the 26th day of July, A. D. 1904, the respondent filed a motion for leave to file amendment to its return heretofore made, which motion is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General, and J. M. Barrs, as Special Counsel of the Railroad Commission of said State.
vs.
SEABOARD AIR LINE RAILWAY COMPANY, ETC.

50 Motion.

Now comes the Seaboard Air Line Railway Company and moves the court for leave to file the attached amendment to its return heretofore made herein to the alternative writ of mandamus in this cause.

GEO. P. RANEY,
Attorney and of Counsel for Respondent.

And upon the same day, to-wit, on the 26th day of July, A. D. 1904, the supreme court made an order that the amendment be filed, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. COMPANY, Defendant.

This cause coming on to be heard upon motion of counsel for the defendant for leave to file an amendment to its return heretofore filed, and upon consideration thereof it is ordered that the amend-

ment be filed, and that the State plead thereto on or before Friday, the 29th instant.

And upon the same day, to-wit: the 26th day of July, A. D. 1904, the defendant filed its amendment to its return, which amendment is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

51 THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General, and J. M. Barrs, as Special Counsel for the Railroad Commission of said State,

vs.

SEABOARD AIR LINE RAILWAY, a Corporation, etc.

Amendment to Return of The Seaboard Air Line Railway, a Corporation, etc., Defendant, Filed July 19th, 1904, to the Alternative Writ of Mandamus in the Above Cause.

The Seaboard Air Line Railway, defendant, aforesaid, with leave of court first had and obtained, amends the return filed as above stated and numbered V so that such fifth return shall read as follows:

And for a further and additional return to said alternative writ of mandamus respondent says that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida railroad commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY,
Division Counsel for Florida.

52 GEO. P. RANEY,
Attorney for Defendant.

STATE OF FLORIDA, County of Duval, } *ss:*

Before me, A. V. S. Smith, a notary public in and for the State of Florida at large, personally appeared D. E. Maxwell, and he being duly sworn deposes and says that he is general agent of The Seaboard Air Line Railway, a corporation, etc., respondent in the above proceedings, and that the statements made in the above return are true.

D. E. MAXWELL.

Sworn to and subscribed before me this 25th day of July, 1904. Witness my hand and official seal.

[SEAL.] A. V. S. SMITH,
Notary Public in and for State of Florida at Large.

And afterwards, to-wit, on July 29th, A. D. 1904, the plaintiff filed its motion to quash the amended return and to issue a peremptory writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, etc.
} #2.

53 Motion of the Plaintiff to Quash the Amended Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

And now comes the plaintiff in the above entitled cause by W. H. Ellis as attorney general for the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, and moves the court to quash the amended return of the respondent to the said alternative writ of mandamus and to issue a peremptory writ of mandamus herein; and for the grounds of its said motion the plaintiff shows the court the following:

1. Said return is frivolous and evasive.
2. The defenses set up in said return are repugnant and inconsistent.
3. Said return is argumentative and states conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainity as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why a peremptory writ of mandamus should not issue.

WM. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Florida.

54 And on the same day, to-wit: the 29th day of July, A. D 1904, the supreme court made an order in the words and figures following:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. CO., Respondent.

This cause is this day submitted to the court upon motions of counsel for the plaintiff to quash the returns of the respondent, and for a peremptory writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 30th day of July, A. D. 1904, the supreme court made an order that the motions to quash the returns of the respondent and for a peremptory writ of mandamus, be granted in part and denied in part, and that further time be granted respondent to apply for leave to file further amended return, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, *et al.*, Plaintiffs,
vs.
SEABOARD AIR LINE RY. CO., Respondent. (No. 2.)

55 This cause having been submitted to the court upon motion of plaintiffs to quash the returns of the respondent and for a peremptory writ of mandamus, upon consideration thereof it is ordered that the motion, in so far as it relates to the first four returns, be and the same is hereby granted; and it is further ordered that the motion, in so far as it relates to the 5th amended return, be and the same is hereby denied. Counsel for the respondent asking time within which to apply for leave to file further amended return to the alternative writ, time is granted until Monday next at 10 o'clock a. m.

And afterwards, to-wit: on the 1st day of August, A. D. 1904, the plaintiff joins issue on the fifth amended return of the respondent, and files its motion for an order to take testimony on the issues joined, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, &c.,
vs.
THE SEABOARD AIR LINE RAILWAY, &c. } (#2.)

Joinder of Issues on Return and Motion for Order to Take Testimony.

Now comes the State of Florida and joins issue upon the fifth amended return of respondents to the alternative writ of mandamus issued herein and moves the court for an order to take testimony on the issues joined.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the State of Florida.

56 And on the same day, to-wit: on the 1st day of August, A. D. 1904, the supreme court made an order that the cause be set for trial on the 4th day of October, A. D. 1904, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Respondent. } (No. 2.)

Counsel for the respondent having announced in open court that it did not desire to apply for leave to further amend its return, comes now the plaintiff and files its joinder of issue upon the amended return of the respondent to the alternative writ of mandamus herein, and moves for an order to take testimony on the issues joined; and thereupon the cause being at issue, it is ordered that same be set for trial on the 4th day of October, A. D. 1904, upon which day the parties are required to produce their testimony before the court. In the meantime, if either party so desires, it may take depositions of witnesses, upon commission issued by the clerk of this court, or before a justice of the peace in accordance with the statutes of this State and the rules governing circuit courts in the matter of depositions; and the clerk of this court is directed to issue commissions for the taking of such depositions as may be applied for by either party, in accordance with such statutes and rules.

57 And afterwards, to-wit: on the 4th day of October, A. D. 1904, the supreme court made an order that the case be continued for hearing until the 12th instant, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* R. R. COMMISSIONERS ET AL., Relators, vs. SEABOARD AIR LINE R'Y CO., Defendant. } No. 2.

This cause having been set for trial on this day, now upon application of counsel for the respondent it is ordered that the same be continued for hearing on Wednesday, the 12th instant.

And afterwards, to-wit: on the 12th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff, vs. SEABOARD AIR LINE RAILWAY, Defendant. } No. 2.

58 This cause being at issue and being set for trial on this day, come now the parties by their counsel, and the defendant produces and files as evidence the annual report of the Seaboard Air Line Railway for the year ending June 30, 1904, filed with the railroad commission, and the seventh annual report of the railroad commission; and the plaintiff's counsel announcing that he would introduce no testimony, thereupon the case is continued for argument until to-morrow.

And afterwards, to-wit: on the 13th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff, vs. SEABOARD AIR LINE RAILWAY, Defendant. } No. 2.

In pursuance of an order entered herein on yesterday, this cause is now submitted on the evidence introduced at that time and the

argument of counsel for the respective parties, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 19th day of October, A. D. 1904. the supreme court of Florida filed with the clerk of said court its opinion in said cause, which opinion is in the words and figures as follows, to-wit:

59 In the Supreme Court of Florida, June Term, A. D. 1904.
En Banc.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
v.
SEABOARD AIR LINE RAILWAY, a Corporation, Respondent.
} No. 2. Original.

COCKRELL, *J.:*

The issues raised by the amended return filed herein July 26, 1904, are the same as those raised in the Atlantic Coast Line case, just decided, that is whether the phosphate rate sought to be enforced herein is in and of itself unreasonable, and whether said rate taken in connection with the other rates enforced by the State railroad commission on local business would deprive the railway of its property without due process of law or deny to it the equal protection of the law within the inhibition of the Federal Constitution. Under the law the burden is upon the respondent to establish both these propositions.

The only proof offered was the sworn report of the railway company to the railroad commission of Florida for the year ending
60 June 30, 1904; this report was admitted without objection. There is nothing in the report that tends to show that the rate is of itself unreasonable nor in fact any evidence that bears even remotely upon the specific rate, nor what the present voluntary rate is.

There was merely a suggestion in the argument that such rate is inherently unreasonable because the railway might be called upon to carry phosphate for one mile only and that this could not be done profitably at the rate prescribed. Such an argument is too speculative to be safely followed, and in the absence of an affirmative showing that the common carrier is face to face with such problem, that the actual test has been applied, we do not feel that the solemn finding of the railroad commission should be overthrown. There is no showing that phosphate is carried locally

nor what may be charged for shipping the commodity in interstate or foreign commerce.

The respondent further fails to meet the burden of showing that the rate prescribed together with the other rates in force deprive the respondent of a right guaranteed by the Constitution of the United States. It is impossible to ascertain from this showing what may be the operating expenses or the value of the road in Florida. There are given figures to show that the total cost of construction, equipment, &c., of the road in Florida has been about fifteen and a half million dollars, but nothing to show what the depreciation has been nor what the present value is. To questions asked by the railroad commission as to expenses of fuel and other operating items, the respondent replied that it could not answer by States. It seems that the respondent in operating its line through several States has a scheme of distributing its incomes and expenses according to States, but this scheme is not made clear to us, nor has it so divided its domestic and foreign business that we can say that the net earning of only 3½ per cent. on the total cost of construction, equipment, &c., is a confiscation of its property, or in anywise an infringement upon its constitutional rights.

61 The court finds that the rate in question is not unreasonable and the court further finds that such rate, taken in connection with the other rates prescribed by the Florida railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law.

Mr. Justice Carter, before being called away by reason of illness in his family, took part in the consideration of this case and concurred in the conclusions announced.

The peremptory writ will be awarded.

Taylor, C. J., Shackleford, Hocker and Whitfield, JJ., concur. Carter, J., absent.

62 And thereafter on the same day, the 19th day of October, A. D. 1904, the supreme court of Florida entered its judgment in favor of the plaintiff and ordered that a peremptory writ of mandamus issue, which judgment is in the words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

63 THE STATE of FLORIDA *ex Rel.* W. H. Ellis, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, Defendant. } No. 2. Original.

This cause coming on to be heard upon the amended return of the respondent filed by leave of the court July 26, 1904, and the joinder of issue upon the amended return of the respondent to the alternative writ of mandamus issued herein, and upon the documentary evidence in behalf of the respondent submitted on the 12th instant, and having been argued by counsel for the respective parties, and the court having considered the same, and being now advised of its judgment in the premises, finds the issues in favor of the plaintiff; therefore it is ordered that the peremptory writ of mandamus be and the same is hereby granted; and it is further ordered that the plaintiff do recover of the respondent its costs by it in this behalf expended, which costs are taxed at the sum of —; and it is further ordered that the respondent is required to make return to this court instanter of its full compliance with the commands of the said peremptory writ of mandamus.

The opinion of the court in this cause was this day read by Mr. Justice Cockrell and ordered to be filed.

64 And afterwards, to-wit: on the 2nd day of November, A. D. 1904, came the respondent, by counsel, and filed in open court before the chief-justice its petition for the allowance of a writ of error to the judgment heretofore rendered herein returnable before the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina.

Mandamus. No. 2.

To the Honorable R. Fenwick Taylor, chief-justice of the supreme court of the State of Florida:

The petition of the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina, the respondent in the above stated cause, showeth that a final judgment was rendered by the said supreme court of the State of Florida in said cause on the 19th day of October, A. D. 1904, and that said cause is an action by writ of mandamus in said supreme court of Florida in the exercise of its original jurisdiction; and that in and by said judgment a peremptory writ of mandamus was awarded against respondent, compelling the respondent to put into
65 effect and operation a schedule and tariff of freight for the carriage of phosphate from points in Florida to points in Florida prescribed by the railroad commissioners of the State of Florida by an order made on the 17th day of December, A. D. 1903; and that in and by the amended fifth return of respondent to the alternative writ of mandamus in said cause it was alleged by respondent that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by respondent in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, were unreasonable, and did not give to the respondent fair and reasonable compensation for the services required to be performed by it in the carriage of freight and passengers and that the enforcement of such tariff of rates of said Florida railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the laws, contrary to the guarantees of the Constitution of the United States and the amendments thereof. That by the decision and judgment of the said supreme court of the State of Florida, rendered upon the issues made by said amended fifth return after the hearing of testimony in the cause, it was adjudicated by said supreme court of Florida both that the rate so prescribed by said order of the railroad commission was not unreasonable and that

said rate, taken in connection with the other rates prescribed by the said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

The said supreme court of the State of Florida is the highest court of the State of Florida having jurisdiction of said cause, and said judgment is a final judgment in the highest court of the State of Florida in which a decision in said suit could or can be had.

66 Your petitioner, therefore, prays your honor to allow a writ of error to the said respondent in the above stated cause, returnable to the Supreme Court of the United States, according to the rules of said last named court, the acts of Congress and the Constitution of the United States in such cases made and provided; and that your honor will fix the amount of the penalty of bond to be given by petitioner and to operate as a supersedeas to the enforcement of such judgment of the supreme court of Florida.

And your petitioner, as in duty bound, will ever pray.

GEO. P. RANEY,
Attorney for Seaboard Air Line Railway.

Whereupon on the same day, the 2nd day of November, A. D. 1904, the prayer of the petitioner was granted by an order in the words and figures as follows, to-wit:

Upon reading and considering the foregoing petition, and it appearing that the cause is one in which the Seaboard Air Line Railway is entitled to a writ of error under the Constitution of the United States and the acts of Congress, the writ of error hereby prayed for is hereby allowed; and the amount of the penalty of the bond to be given by petitioner to operate as a supersedeas to the enforcement of the judgment of the supreme court of Florida is hereby fixed at two thousand dollars.

Done at Tallahassee, Florida, this 2nd day of November, A. D. 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

67 And thereafter upon the same day, the 2nd day of November, 1904, upon presentation to the chief-justice of the aforesaid petition for and allowance of a writ of error, the same was allowed by the chief-justice as appears upon the original writ of error, the original of which writ of error, with the allowance thereof, is in the words and figures as follows, to-wit:

68 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Florida before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between The State of Florida upon the relation of W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, and The Seaboard Air Line Railway, a body corporate under the laws of the States of Virginia and North Carolina, wherein was drawn in question the validity of an authority exercised under said State on the ground of the same being repugnant to the Constitution of the United States as depriving said Seaboard Air Line railway of its property without due process of law, and of the equal protection of the laws, and the decision was in favor of the validity of such authority, a manifest error hath happened to the great damage of the said Seaboard Air Line railway, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of December, A. D. 1904, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court of the United States, the 2nd day of November, in the year of our Lord nineteen hundred and four.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk United States Circuit Court, Fifth Circuit
and Northern District of Florida.
By J. J. HODGES,
Dep. Clerk.

Writ of error allowed November 2nd, 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

[Endorsed:] Filed Nov. 2, 1904. B. B. Wilson, clerk supreme court.

69 And upon the same day, the 2nd day of November, A. D. 1904, a citation was allowed by the chief-justice as appears by the original thereof, which original citation, with acceptances of service thereof by the attorneys for the defendant in error, is in the words and figures as follows, to wit:

70 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Florida upon the relation of W. H. Ellis, as attorney-general of said State, and J. M. Barrs, as special counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, railroad commissioners of said State, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first day of December, A. D. 1904, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida wherein The Seaboard Air Line Railway, a corporation under the laws of the States of Virginia and North Carolina, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the final judgment therein rendered against the said plaintiff in error on the 19th day of October, 1904, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, this the second day of November, in the year of our Lord nineteen hundred and four (A. D. 1904).

R. F. TAYLOR,
Chief Justice of the Supreme Court of Florida.

By the chief-justice:

[Seal Supreme Court of the State of Florida.]

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

Service accepted this Nov. 3rd, 1904.

W. H. ELLIS,
Att'y Gen'l of State of Florida.

Service accepted this 4th day of November 1904.

J. M. BARRS,
Special Counsel for Railroad Commissioners
of the State of Florida.

[Endorsed:] The State of Florida *ex rel.* W. H. Ellis as att'y-gen., etc. v. Seaboard Air Line R'y. (# 2.) Citation. Filed Nov. 11, 1904. B. B. Wilson, clerk supreme court.

71 And thereafter on the same day, the 2nd day of November, A. D. 1904, the original supersedeas bond of the plaintiff in error in this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of Florida, was filed, which supersedeas bond is in the words and figures as follows, to-wit:

Approved as to form.

LEIGH R. WATTS
General Counsel.

Know all men by these presents, that we, the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina and other States, as principal, and the United States Fidelity & Guaranty Company of Baltimore, a body corporate under the laws of the State of Maryland, as surety, are held and firmly bound unto the State of Florida in the sum of two thousand dollars, to be paid unto the State of Florida, its successors and assigns; the payment of which amount, well and truly to be made, we bind ourselves and our successors jointly and severally firmly by these presents.

Sealed with our seals this the 2nd day of November, A. D. 1904.

Whereas, lately at a term of the supreme court of the State of Florida, in a cause pending in said court wherein The State of Florida upon the relation of William H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, was plaintiff, and the said Seaboard Air Line Railway, which is described in said proceedings as a body corporate under the laws of Virginia and North Carolina, was defendant, a final judgment was rendered in and by said court against said defendant on the 19th day of October, in the year 1904, awarding a peremptory writ of mandamus against said Seaboard Air Line railway, commanding it to put into operation and effect the rate prescribed by an order of the railroad commissioners of the
72 State of Florida made on the 17th day of December, 1903, for transportation of phosphate from points in the State of Florida to points within said State; and,

Whereas, the Seaboard Air Line railway is about to apply to the chief-justice of the supreme court of the State of Florida for the allowance of a writ of error to the Supreme Court of the United States for a review by said Supreme Court of the United States of the aforesaid judgment of the said supreme court of the State of Florida;

Now, therefore, the condition of the above obligation is such, that if the said Seaboard Air Line railway shall make such application to the chief-justice of said supreme court of the State of Florida and the chief-justice of said supreme court of the State of Florida shall allow such writ of error and the Seaboard Air Line railway shall prosecute said writ of error to effect, and shall answer all damages and costs that may be awarded against said company if it fails to

make good its plea, then the above obligation to be void, but otherwise to remain in full force and virtue.

[Seal of Seaboard Air Line Railway.]

SEABOARD AIR LINE RAILWAY,
By J. M. BARR.

Attest: ROB'T L. NUTT,
Ass't Secretary.

[Seal of U. S. Fidelity and Guaranty Company.]

UNITED STATES FIDELITY & GUARANTY COMPANY,
By R. W. WILLIAMS, JR., AND R. W. WILLIAMS,
Its Attorney- in-fact.

Approved this Nov. 2nd, 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

73 And thereafter on the same day, the 2nd day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in said supreme court of Florida its assignment of errors on the writ of error to the Supreme Court of the United States, the original of which is in the words and figures as follows, to-wit:

74 In the Supreme Court of the State of Florida, June Term, A. D 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State, vs. SEABOARD AIR LINE RAILWAY, a Corporation Under the Laws of Virginia and North Carolina, Defendant.	Mandamus.	No. 2.

Now comes the respondent above named, and in connection with its petition for writ of error, assigns the following errors in the action and proceedings of the said the supreme court of the State of Florida in said cause:

First. The court erred in overruling and adjudging insufficient in law the demurrer of the respondent to the alternative writ of mandamus in said cause.

Second. The court erred in granting the motion of the plaintiff to quash the return of the respondent to the alternative writ of mandamus, and holding said return insufficient in law.

Third. The court erred in its final judgment awarding the peremptory writ of mandamus.

Fourth. The court erred in its final judgment awarding the peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the railroad commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said railroad commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

75 Eighth. The court erred in each and every of its orders and judgments rendered in the above cause.

Wherefore respondent prays that said errors may be cured, and the judgment of the said supreme court of the State of Florida be reversed and held for naught.

GEO. P. RANEY,
Attorney for Petitioner.

75½ [Endorsed:] Filed Nov. 2 1904 B. B. Wilson, clerk supreme court.

76 And afterwards, to-wit: on the 29th day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in the supreme court of Florida its petition for an order extending the time for filing the record in the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation.
No. 2.

To the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida:

The petition of The Seaboard Air Line Railway, defendant above named, respectfully shows that owing to the pressure of other business requiring the attention of Mr. Geo. P. Raney, its division counsel for the State of Florida, who has had the above cause in charge, and the consequent inability of such counsel to give the necessary attention to the making up of the record in the above case, the same has not been made up and can not be made up in time to be filed on the return day of the writ of error in the above case, and therefore your petitioner prays that your honor will grant additional time for the making up and filing of said record in the Supreme Court of the United States, and, as in duty bound, your petitioner will ever pray.

77

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY, Division Counsel.

STATE OF FLORIDA,
Leon County.

Geo. P. Raney being duly sworn deposes and says that the statements made in the above petition are true.

GEO. P. RANEY.

Sworn to and subscribed before me this 28th day of November, 1904.

B. F. WILLIS,
Notary Public.

And thereafter on the same day, the 29th day of November, A. D. 1904, and order was made by the chief-justice extending the time for filing the record, which order is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation. } No. 2.

78 This day came The Seaboard Air Line Railway, respondent, by George P. Raney, Esq., its attorney, and made application for an order extending the time for the filing of the record in this case as above, and cause being shown therefor, such application is granted and the time for filing said record on the part of the respondent is extended until, to-wit, the ninth day of January, 1905.

Done and ordered this 29th day of November, 1904.

R. F. TAYLOR,
Chief-Justice of the Supreme Court
of the State of Florida.

79 And during the same term of the supreme court of Florida, and on the 23rd day of December, in the year of our Lord one thousand nine hundred and four, the said defendant made up and tendered its bill of exceptions which were settled and signed by the chief-justice of said court and ordered to be made a part of the record, which said bill of exceptions is in the words and figures as follows, to-wit:

80 In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA on the Relation of W. H. ELLIS, as Attorney General, and J. M. Barrs, as Special Counsel for the Railroad Commissioners, of the State of Florida,
vs.
SEABOARD AIR LINE RAILWAY. } No. 2.

Be it remembered, that on the 12th day of October, in the year of our Lord one thousand nine hundred and four, at a term of the supreme court of the State of Florida, beginning and holden at Tallahassee, in the State of Florida, before Honorable R. Fenwick Taylor, chief-justice of said court, and the Honorables Francis B. Carter, Thomas M. Shackleford, William A. Hocker, Robert S. Cockrell, and James B. Whitfield associate judges of said court, the issue joined in the above stated cause between the said parties (upon the pleadings) came on to be tried before the said chief justice and said associate justices, and upon the trial of that issue The Seaboard Air Line Railway, respondent, pursuant to the statute in such cases made and provided, to maintain

and prove the issue on its part, then and there offered in evidence the report of the said Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and the same on being so offered was filed in evidence and is in the words and figures following, to-wit:

(Here follows Exhibit A, marked pp. 81, 91, 93, 95, 100, 101, 103, 104, 105, 107, 109, 111, 113, 114, 115, 117, 119, 121, 123, 125, 127, 129, 130, 140, 142, 144, 148, 150, 152, 154, 156, 162, 164, 178 and 180.)

U. S. DEPARTMENT OF AGRICULTURE.

FARMERS' BULLETIN No. 22.

THE FEEDING OF FARM ANIMALS.

[REVISED EDITION.]

BY

E. W. ALLEN, Ph. D.,
Assistant Director of the Office of Experiment Stations.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1901.

LETTER OF TRANSMITTAL.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF EXPERIMENT STATIONS,
Washington, D. C., October 19, 1901.

SIR: I have the honor to transmit herewith revised copy for Farmers' Bulletin No. 22, on the Feeding of Farm Animals, prepared under my direction by E. W. Allen, Ph. D., assistant director of this Office. In this article the attempt has been made to make a clear and concise explanation of the principles on which the successful feeding of farm animals is based. These principles have been established by feeding experiments and other investigations at experiment stations and similar institutions in Europe and America, combined with observations of the practice of successful feeders. The present bulletin has been confined to a statement of the general principles of feeding, with the expectation that hereafter it may be possible to discuss the application of these principles to different kinds of farm animals in other publications of this series.

In this second revision of the bulletin certain changes have been made on the basis of more recent information.

Respectfully,

A. C. TRUE,
Director.

Hon. JAMES WILSON,
Secretary of Agriculture.

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Copy 45 S.A.L.
No. 2

ANNUAL REPORT

OF THE

TO THE

Railroad Commissions

~~INTERSTATE COMMERCE COMMISSION~~

OF THE

State of Florida

~~UNITED STATES~~

FOR THE YEAR ENDING JUNE 30, 1904.

PROPERTY OPERATED—STATE OF ~~GEORGIA~~.

[FOR ROADS MAKING OPERATING REPORTS.]

NAME OF EVERY RAILROAD THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

IN GIVING ROADS BELOW, OBSERVE THE FOLLOWING CLASSIFICATION AND ORDER:

1. Railroad Line represented by Capital Stock:
   - A. Main Line.
   - B. Branches and Spurs. [See "Instructions," page 8.]
2. Proprietary Companies whose entire Capital Stock is Owned by this Company.
3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
A				
Seaboard Air Line Ry	Ga State Line	Jacksonville Fla	36.16	
	Jacksonville Fla	Chaires Junc	20.906	
	Fernandina	Cedar Key	155.70	
	Waldo	Tampa	155.44	
	Brighton	Monticello	4.38	
	Tallahassee	St Marks	20.95	
	Fernandina	Ogelvia Beach	.25	
	Archer	Gayly Bird	98.75	
	Wildwood	Lake Charm	7.016	
	Silver Spg Jct	Silver Springs	1.90	
	Camptonville	Camptonville	.207	
	Summerfield	Lake Weir	7.65	
	Starke	Wannee	56.44	774.81
B				
Seaboard Air Line Ry	Fla MR & Nav Junc	Boone	9.83	
	Gayly Bird	Spur	.60	
	Lake Griffin	"	.54	
	Camp	"	.17	
	Deen Cy	"	1.95	7.68

PROPERTY OPERATED.

[FOR ROADS MAKING OPERATING REPORTS.]

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3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
1 A				
Seaboard Air Line Ry	Portsmouth	Norlina	102.10	
	Weldon	Weldon	78.60	
	Raleigh	Raleigh	96.20	
	Wilmington	Hamlet	96.60	
	Monroe	Rutherfordton	66.63	
	Deep Junction	Deep Junction	76.10	
	Hamlet	Rockfish	8.10	
	Ellerbe	Ellerbe	18.28	
	Camden	Camden	5.90	
	Columbia	Columbia	32.66	
	Savannah	Savannah	19.85	
	Lyons	Montgomery	16.99	
	Savannah	Jacksonville	138.96	
	Jacksonville	Fernandina	29.06	
	Fernandina	Ocala	150.70	
	Waldo	Tampa	165.00	
	Henderson	Durham	41.60	
	Henderson	Oxford	4.51	
	Roxboro	Lynchburg	52.00	
	Broadnax	Danville	10.00	
	Monroe	Pittsboro	11.20	
	Ellerbe	Cheraw	4.70	
	Mine Junction	Kenansville	1.70	
	Laurinburg	Lumberton	10.33	
	Hamlet	Wilson	10.13	
	Columbus	Albany	83.00	
	Nashville	Ocilla	30.80	
	Savannah River	Southern Junction	2.08	
	Dryton	Monticello	4.38	
	Bellamine	St Marks	22.85	
	Fernandina	Amelia Beach	2.45	
	Archer	Early Bird	28.75	
	Wildwood	Lake Charm	7.16	
	Silver Springs	Silver Spring	1.90	
	Sumterville	Sumterville	2.07	
		Total carried forward,	2468.1	

PROPERTY OPERATED—CONTINUED.

[FOR ROADS MAKING OPERATING REPORTS.]

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
Total brought forward.			24.861	
Suwannee River Line Ry	Starke	Sanderson	56.44	
	Summerfield	Lake Weir	7.65	25.9270
Seaboard Air Line Ry	Peninsular Junc.	Peninsular Phosphate	2.54	
	Agric. Chemical Spur	Mine	2.83	
	Early Bird	Mine	.60	
	Jeff Griffin	Mine	.59	
	Camp	Spur	1.71	
	Duncan	One mile	1.95	
	Belt Junction	Mineral Park	5.00	15.22
Central of Georgia Ry	Lyons	Meldrim	57.65	57.65
Wilmington Ry & Bdg. Co.	Kirkland	Navassa	2.40	2.40
Western & Atlantic Ry	Howells	Atlanta	3.00	3.00
Note. The above does not include 2.00 miles of line from Fernandina to Amelia Beach leased & 33 miles Leased. Von Hurley Creek Spur to Drewry				
		Total Mileage Operated,		261.09

NAME OF ALL COAL, BRIDGE, CANAL, OR OTHER PROPERTIES, THE EARNINGS AND EXPENSES OF WHICH AFFECT THE GENERAL BALANCE SHEET—PAGES 49 AND 51.

NAME.	CHARACTER OF BUSINESS.	TITLE. [OWNED, LEASED, ETC.]	STATE OR TERRITORY.
	None		

EXPLANATORY REMARKS.

In addition to the outstanding Capital Stock of $62.500.00 as shown on page 17 there is outstanding in hands of the Public $98.559.63 par value of Proprietary Lines Stock which is being bought up as fast as possible and for the purpose of acquiring same we have put up a sum for a like amount Showing same on General Balance Sheet as reserve for acquiring outstanding Capital Stock of Proprietary Companies

CAPITAL STOCK.

DESCRIPTION.		NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR.	
						RATE.	AMOUNT.
Capital Stock:	Common,	375000	10000	3750000000	3750000000	None	None
	Preferred,	250000	10000	2500000000	2500000000		
	TOTAL,	625000	10000	6250000000	6250000000	None	None

MANNER OF PAYMENT FOR CAPITAL STOCK.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,	None	None			
	Preferred,	"	"			
Issued for Construction:	Common,	None	None	2000	None	
	Preferred,	"	"			
Issued for Reorganization:	Common,					
	Preferred,					
Issued for Acquiring Securities of Proprietary Companies	Pref	None		250000	None	
	Com	"		373000	"	
	TOTAL,	None		625000	None	

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME.		AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST.			
	DATE OF ISSUE.	WHEN DUE.					RATE.	WHEN PAYABLE.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Balt. 1st mtg	1900	1950	75000000 00	34275000 00	12775000 00	Carmack, State	4	A & O	511000 00	511000 00
" Balt. Jr. 10 Year	1901	1911	10000000 00	10000000 00	10000000 00	10000000 00	5	M & N	500000 00	500000 00
" " " 3 "	1904	1907	5000000 00	5000000 00	6000000 00	5000000 00	5	M & S	52083 33	
B & R 1st Mtg	1886	1926	2500 00000	2500000 00	2500000 00	2561188 12	5	J & J	125000 00	125000 00
" Registered	—	1916	690 00000	690000 00	285000 00	690000 00	6	J & W	17100 00	17100 00
R & J R. 1st Mtg	1887	1917	260 00000	260000 00	55000 00	260000 00	"	A & O	3300 00	3300 00
R & G. " "	1897	1947	1500 00000	1200 00000	1200 00000	1150980 00	5	J & J	60000 00	60000 00
A & N " "	1888	1928	248 00000	150 00000	100 00000	145264 52	6	M & N	6000 00	6000 00
R & A. 1st " "	1886	1926	100 00000	100 00000	100 00000	100 00000	"	J & J	6000 00	6000 00
Pass. Extn. "	1899	1949	300 00000	300 00000	300 00000	Carmack, State	4	"	12000 00	12000 00
J & R N. " "	1889	1929	536 00000	536 00000	536 00000	486260 00	5	"	26800 00	26800 00
G. & N. 1st Consol.	1895	1945	140 00000	61850000	57850000	Carmack, State	"	"	2385833 33	2385833 33
G. & N. Imp. Co.	1899	1945	100 00000	100 00000	100 00000	" "	"	J & D	5000 00	5000 00
J & P. 1st Mtg	1888	1918	300 00000	300 00000	300 00000	300 00000	"	J & J	15000 00	15000 00
J & P. L. G. Ext.	1890	1930	50 00000	4680000	4100000	4680000	"	"	20500 00	20500 00
J & P. 1st Con.	1893	1943	780 00000	437200 00	437200 00	279000 00	"	"	21860 00	21860 00
Iowa Bond & Mtg	1891	1941	210 00000	203300 00	203300 00	203300 00	"	A & O	10165 00	10165 00
TOTAL:										
Mortgage Bonds,			1179 58000 00	654 93000 00	430 75000 00	389 61027 64			1994 73333	1994 73333
Miscellaneous Obligations,			150 00000 00	150 00000 00	150 00000 00	150 00000 00			52083 33	500 00000
Income Bonds,										
GRAND TOTAL,			1329 58000 00	804 93000 00	580 75000 00	539 61027 64			2046 81666	2494 73333

EXPLANATORY REMARKS.

Table B

Note 1. These are receivers notes of A & M. Ry and we are unable to separate interest and principal.

Note 2. These are obligations on the bond plan with coupons attached drawing interest. The interest not being included in face of notes only the principal is taken into account, the interest being accrued each month. The outstanding or unearned amount of interest is not stated for the reason if shown in two columns, amount outstanding principal" and "amount outstanding interest" would not show the total outstanding June 30" 1904 of $3,444,344.89 as shown on page 73 and carried to Balance Sheet.

FUNDED DEBT—CONTINUED.
EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Lease No 99	Nov 10 1902	7 Years	84	250 Box Cars	Box cars 4734 to 5232 Eau Rouge
Ohio Falls Car Mfg. Co	Oct 15 1902	"	84	20 Refg. "	May 1 to 20 Inc
Lease No 103	Oct 21 1902	"	84	200 Box "	" 17000 to 17199 Inc
D & L Series B	April 1st 1897	10 "	10	12 Locomotives	
" " C	" " 1896	" "	10	13 Frg. " 175 Box 100 Flats	
" " A	Oct " 1897	20 "	20	2 Switch " 150 Flats	Equipment held under lease
Blair & Co. " "A"	July " 1900	6 3/4 "	20	1000 Flats 700 Box 300 Work Box	until paid for in full
Kennedy & Co " "B"	Jan 29 1902	10 "	40	300 " 10 Bent Loco 500 "	
Guaranty & Co " "C"	April 2 1903	" "	40	10 Frg. Locos. 10 Pass " 10 Cabooses	
				41 Pass. 100 Cafe 700 Box 200 Refrigerator Cars	
				200 Gondola Coal 200 Work Box	
				50 Skeleton underframe box cars	500 Work Box 1904 1900 mo 500 580 Mar
Ry. Loco & Car Co. A	June 1 1904	1 "	90	10 Consol Engines 500 Work Box 6 Engines 700-709 incl	25001-25500 inc

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				RATE.
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	
Lease # 99	311764	14668750	2224908	2474250	54842	173160	173160	7 annual
Rhode Island Loco Works	None	2564484	"	(See Note 1 Page 20)	"	"	"	
Series A D & L Ry	"	2500000 00	"	" " 2 " "	"	"	"	6 Flats
Ohio Falls Car Mfg Co.	"	5720970	1543378	1217434	71261	111458	111458	
Lease # 103	336900	12480000	5885777	2387600	464623	342597	342597	
Burnham Williams & Co	3054375	18909108	"	1600983	"	19231	19231	"
Series B D & L Ry	"	1100 0000	1100000	(See Note 2 Page 20)	"	96256	96256	5%
" C " "	"	2500 0000	5000000	" " " "	"	343772	343772	"
" D " "	"	30000000	21000000	" " " "	"	1075000	1075000	"
Rich Loco & Mch. Works	1425000	12947400	"	1108900	"	31100	31100	6 Flats
" " "	2137500	19421136	"	1663088	"	62158	62158	"
Pitts Car & Loc Works	142200	8712732	"	654732	"	33576	33576	"
Blair & Co Series A	2708 0000	11509 0000	4509 0000	(See Note 2 Page 20)	"	262950 00	262950 00	5%
Kennedy & Co " B	1312 7200	5311293 00	5431 0000	" " " "	"	25 8675 00	25 8675 00	6%
Guaranty & Co " C	1848 0000	15993600 00	1435 0000	" " " "	"	601 8449	601 6449	"
Ry Loco & Car Co A	172 7500	6400 0000	6400 0000	" " " "	"	14222	"	5%
TOTAL,	9763 4529	638073880	34364 4063	11322787	590726	1366 3229	1352 1007	

Principal 34364 4063
Interest 590726
Total 3442 3471 89

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST.	
			AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,	654930000 00	430750000 00	19947333 33	19947333
Miscellaneous Obligations—Page 19,	150000000 00	150000000 00	5520833 33	5000000
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,	63807388 80	34423478 89	1366229 29	1352100
TOTAL,	868737388 80	615173478 89	26834495 95	26299433

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL.		INTEREST.		
			AMOUNT PAID DURING YEAR.	AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1904.	
Cash,	13806943	Receiver's Certificates,	
Bills Receivable,	4564182	Loans and Bills Payable,	3854860
Due from Agents,	2570540	Audited Vouchers and Accounts,	14466847
Due from Solvent Companies and Individuals,	748231	Wages and Salaries,	4648592
Net Traffic Balances due from other Companies,	x x x x	Net Traffic Balances due to other Companies,	651930
Other Cash Assets [Excluding "Materials and Supplies"].[1]	1080199	Dividends not Called for,	✓
		Matured Interest Coupons Unpaid (Including Coupons due July 1).	8197300
		Rents due July 1,	✓
		Miscellaneous,	956173
TOTAL—CASH AND CURRENT ASSETS,	22780655	TOTAL—CURRENT LIABILITIES,	32778703
BALANCE—CURRENT LIABILITIES,	9998383	BALANCE—CASH ASSETS,	✓
TOTAL,	32778703	TOTAL,	32778703

[1] Materials and Supplies on hand, $6970100

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT.		AMOUNT PER MILE OF LINE.		REMARKS.
		TO RAILROADS.	TO OTHER PROPERTIES. [Page 11.]	MILES.	AMOUNT.	
Capital Stock—Page 17,	6250000000	6250000000	None	255425	2446902	
Bonds—Page 19 ["Grand Total"],	5807500000	5807500000	"	255425	2273661	
Equipment Trust Obligations—Page 21,	644234789	644234789	"	255425	13476	
TOTAL,	12401734789	12401734789	"	255425	4855837	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE.	
				MILES.	AMOUNT.
Seaboard Air Line Ry	6250000000	6151734789	12401734789	260797	4755321
GRAND TOTAL,	6250000000	6151734789	12401734789	260797	4755321

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1903.	TOTAL COST TO JUNE 30, 1904.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
CONSTRUCTION:						
1. Engineering,			34876	654065	688941	270
2. Right of Way and Station Grounds,			1416925	20638810	34802035	13625
3. Real Estate,			1009567	8072825	9082392	3556
4. Grading,			3853796	30245356	34099152	13350
5. ~~Tunnels~~, Bonds of Depositary Acq. Sold					58000000	22707
6. Bridges, Trestles, and Culverts,			2240717	10870987	13111704	5133
7. Ties,			1745997	6608121	8354118	3270
8. Rails,			8666224	30675771	39341995	15403
9. Track Fastenings,			3637920	8406099	12044019	4715
10. Frogs and Switches,			1040971	3992188	5033159	1970
11. Ballast,			6784059	16077879	22861938	8951
12. Track Laying and Surfacing,			1648212	10101795	11750007	4600
13. Fencing Right of Way,			176606	839931	1016537	398
14. Crossings, Cattle Guards, and Signs,			1634205	1946225	3580430	1402
15. Interlocking or Signal Apparatus,			34804	675492	709796	278
16. Telegraph Lines,				139108	139108	54
17. Station Buildings and Fixtures,			6686633	32687090	39373723	15415
18. Shops, Roundhouses, and Turntables,			1162395	6062683	7225078	2829
19. Shop Machinery and Tools,			467122	5500881	10175003	3984
20. Water Stations,			93841	3355594	3949435	1546
21. Fuel Stations,			3111075	1751195	3862270	1512
22. Grain Elevators,			28800	34489	63289	25
23. Storage Warehouses,				1000587	1000587	392
24. Docks and Wharves,			3199913	9766748	12966661	5077
25. Electric-Light Plants,			90709		90709	36
Treasury Stock Issued to Amounts of $5000.000 bonds 26. ~~Electric-Motive-Power Plants~~,					1250000000	489380
27. ~~Car-Making Plants~~, Acquired by control of Stock			16556251	31028630877	3087297836	1208690
28. Miscellaneous Structures,			129449	7397089	7267640	2845
29. Legal Expenses,			35250	515738	550988	216
30. ~~Interest and Discount~~, Purchase of Contracts R.R.				853313	853313	334
31. General Expenses,			19190	1087414	1106604	433
TOTAL CONSTRUCTION,			49078407	33233200 60	46803984 67	1832396

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS—CONTINUED.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1903.	TOTAL COST TO JUNE 30, 1904.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
EQUIPMENT:						
1. Locomotives,			469481 14	11782321 5	16477132 9	64509
2. Passenger Cars,			500753	19979614	18478859	7235
3. Sleeping, Parlor, and Dining Cars,						
4. Baggage, Express, and Postal Cars,				513637 3	513637 3	2010
5. Combination Cars,						
6. Freight Cars,			4565917 2	312520486	358179658	140229
7. Other Cars of all classes,			82715 2	5831174	6658326	2607
8. Floating Equipment,			100000	416974	316974	124
Acquired by contract of Assets) Destroyed Equipment to June 30th 1903.				22859192 2	22859192 2	89495
					3776945 3	14787
TOTAL EQUIPMENT,			9183368 3	690299758	744363988	291422
TOTAL CONSTRUCTION—PAGE 27,			4907840 7	3323320660	4680398467	1832396
GRAND TOTAL COST CONSTRUCTION, EQUIPMENT, ETC.,			1409120907	4018619818	5424762455	2123818
" " " " " State of Florida			42674101	1118466113	1161140214	1527173

QUESTION.	ANSWER.	REMARKS.
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. Yes	
2. Do the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?	2. None	

29 57

EXPLANATORY REMARKS.

Other Deductions.				Deductions For Year			
Interest on Land Notes	4	92	81	Retirement Steps Fire Loss	126	47	30
Interest on Temporary Loans	113	088	97	Deferred Accounts.	66	925	75
Total Other Deductions	118	010	78	Chas. Aug. 2nd Shasta Air Line	56	449	15
				Destroyed Equipment	214	997	29
				Rail Shortage	30	485	99
				Obsolete Material	20	000	00
				Notes Accounts Receivable Not Collectible	34	278	45
				Losses on sale of Securities	22	069	00
				Reorganization Expenses-payments	79	905	96
				Reserve set up for Pacific Claims	58	076	45
				Sundry accounts	219	576	99
				Suspended Expenses & Commissions	115	975	00
				Reserve for contested litigation	100	000	00
				Total Deductions for Year	1144	320	53

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	12729567	
Less Operating Expenses—Page 45,	9092506	
INCOME FROM OPERATION,		3637054
DEFICIT,		
Dividends on Stocks Owned—Page 37,	304000	
Interest on Bonds Owned—Page 39,	101550	
Miscellaneous Income—less Expenses—Page 41,	10450	
INCOME FROM OTHER SOURCES,		416000
TOTAL INCOME,		3678654
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	2683495	
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	48930	
Taxes—Page 79, A,	530974	
Permanent Improvements—Page 29,		
Other Deductions,	118078	
TOTAL DEDUCTIONS FROM INCOME,		3381962
NET INCOME,		2946946
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,		
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,		2946946
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		16474874
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Additions for Year,		
Deductions for Year,		1144230
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		7977551
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

INCOME ACCOUNT.

[FOR ROADS NOT MAKING OPERATING REPORTS.]

INCOME FROM LEASE OF ROAD,		
Dividends on Stocks Owned—Page 37,	None	
Interest on Bonds Owned—Page 39,		
Miscellaneous Income—less Expenses—Page 41,		
INCOME FROM OTHER SOURCES,		
TOTAL INCOME,		
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Salaries and Maintenance of Organization,	None	
Interest on Funded Debt Accrued—Page 23,		
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,		
Taxes—Page 79, A,		
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		
NET INCOME,		
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,	None	
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,	None	
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	6878819		
Less Repayments—			
Tickets Redeemed,		240225	
Excess Fares Refunded,		55395	
Other repayments,		387849	
Total Deductions,		683469	
TOTAL PASSENGER REVENUE,			6811350 44
Mail,			682603 8
Express,			808684
Extra Baggage and Storage,	76201 8		76201 8
Other items,	14450		14450
TOTAL PASSENGER EARNINGS,			8392293 4
FREIGHT:			
Freight Revenue,	192005146		
Less Repayments—			
Overcharge to Shippers,		9107486	
Other repayments,		895702	
Total Deductions,		10003188	
TOTAL FREIGHT REVENUE,			182001958
Stock Yards,			
Elevators,			1407122 8
Other items,			
TOTAL FREIGHT EARNINGS,			1960731 86
TOTAL PASSENGER AND FREIGHT EARNINGS,			2789961 20
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Per Diem and Mileage—Balance,	142560		
Hire of Equipment—Balance,			
Telegraph and Telephone Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,	454187		
TOTAL OTHER EARNINGS,			4689 87
Total Less Earnings from Operation in Florida			2846 80 507
TOTAL GROSS EARNINGS FROM OPERATION, Entire Line			11954 1209

STOCKS OWNED.

A. RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
[illegible] Ry Common	15000000			15000000
[illegible] RR 2nd Preferred	11000000			11000000
" " Common	11442000			
" " Leased	2000000			
" " 2nd Preferred	4420000			
[illegible] RR Common	5715000			
[illegible] " "	1491000			
[illegible] " "	2901000			
[illegible] " "	8971000			
[illegible] " "	1487000			
" " " Preferred	4465000			
" " " Scrip	78953			
[illegible] & O R " Common	11068000			6270895974
[illegible] " " Preferred	5000000			
[illegible] " " Common	10000000			
[illegible] & K Belt "	500000			
Palmetto R R "	2000000			
[illegible] & Augusta "	2000000			
[illegible] "	434000			
[illegible] & O "	1991950			
[illegible] & A Ry Preferred	4494200			
" " " Common	3867300			
Augusta & Knoxville Line Preferred	2650000			
Ala & B. R. R. Ry Common	57000			
	1525000			
Rich & Walk Pot Line	4450000	4%	178000	4450000
W & A R R & S.S. Co Common	3800000			25328378
Ga. Newb & Sav. "	833500			100000
Spartanburg Ry Co.	200000			100
South Bound Common	2093000			2246579
Air Line (A. & C. Belt)	680000			680000
TOTAL,	46028189[illegible]		1780000	65269144[illegible]

B. OTHER STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Baltimore Steam Packet Co.	4000000			8002295
Savannah Union Station Co.	1000000			1668896
Ga. Fla. Ngt. & Bat. Nav. Co.	80000			807644
Georgia Construction Co.	250000			2867833
Old Dominion S.S. Co.	21000000	6%	1260000	24875000
Atlantic Compress Co.	1250000			1250000
Jacksonville Terminal Co.	5000000			4692997
Seaboard Investment Co.	6250000			13220625
TOTAL,	86800000		1260000	191203850
GRAND TOTAL—A AND B,	468961893[illegible]		3040000	665814285

[illegible] 121

BONDS OWNED.

A. RAILWAY BONDS.

NAME.		TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Fla. West Shore Ry		$3950000		98750	$3486571
Jessup & Roanoke	Reg 6's	4050000			4050000
A & J R RR	1st mtg	2050000			2050000
Durham & Nor	" "	500000			500000
Jax Brunt	" "	7250000			7250000
Cres & Kershaw	" "	5000000			5000000
Jax & Atl Ry	" Const.	2000000			2050000
J. A. & L. Belt	" mtg	600000			510625
Fish. to A & B. & L.	" "	2750000			2778746
A & B. Term. & L.	2nd "	2000000			2000000
A & L R & T.	1st "	448000			xxxxx
Oxford & Coast Line	" "	25000			5485986
S. A. L. Ry Spr. Col. Tr.	Scrip	8100			8100
TOTAL,		$58288100		98750	$52785984.23

B. OTHER BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Florida Publishing Co. 1/2 Interest in $ 14000.00 Bonds		6%	2800	8000
Fernandina Terminal Co.	5000000			5000000
TOTAL,	5000000		2800	5008000
GRAND TOTAL—A AND B,	$58788100		101550	$53293423

RENTALS RECEIVED.

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY USING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
	Wilson to Jarvis	A & L RR	563808	
	Atlanta Ga	Atl Ry & C.	180000	
	Wilborn Fla	Fla Ry	24000	
	Archer to Marietta	A & L RR	432030	
	Tavares Fla	Tavares Gulf "	18000	
	Abraw to Mustang	Ben Sherman "	202500	
	Carthage NC	Carthage "	144000	
	Sidings & Spurs	Various	624560	
TOTAL,				2188278
YARDS:				
TOTAL,				
TERMINALS.	Coxdell Ga	Asso. & Non Ass	84500	
	Lumberton NC	Asso. Non "	9000	
TOTAL,				93500
		GRAND TOTAL RENTS RECEIVED, [For entry on page 35.]		2281778

MISCELLANEOUS INCOME.

ITEM.	GROSS INCOME	LESS EXPENSES.	NET MISCELLANEOUS INCOME.
Notes Bal Newels Laurens RR	104500		104500
TOTAL,	104500		104500

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ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	844625.93
2. Renewals of Rails,	1095138.24
3. Renewals of Ties,	2804840.7
4. Repairs and Renewals of Bridges and Culverts,	860516.55
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	1832840
6. Repairs and Renewals of Buildings and Fixtures,	1388000.51
7. Repairs and Renewals of Docks and Wharves,	254724.7
8. Repairs and Renewals of Telegraph,	397219.7
9. Stationery and Printing,	84438.25
10. Other Expenses,	664797
TOTAL,	16755755.51
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	552.706
12. Repairs and Renewals of Locomotives,	6614826
13. Repairs and Renewals of Passenger Cars,	2917722.9
14. Repairs and Renewals of Freight Cars,	5894534.56
15. Repairs and Renewals of Work Cars,	2086843
16. Repairs and Renewals of Marine Equipment,	728503
17. Repairs and Renewals of Shop Machinery and Tools,	642613
18. Stationery and Printing,	540697
19. Other Expenses,	719765
TOTAL,	17742097.97
CONDUCTING TRANSPORTATION:	
20. Superintendence,	2017694.7
21. Engine and Roundhouse Men,	7122[illegible]
22. Fuel for Locomotives,	19639673.5
23. Water Supply for Locomotives,	538263
24. Oil, Tallow, and Waste for Locomotives,	863072.7
25. Other Supplies for Locomotives,	175618.0
26. Train Service,	4048382.72
27. Train Supplies and Expenses,	1215636.6
28. Switchmen, Flagmen, and Watchmen,	2111917.7
29. Telegraph Expenses,	196021.08
30. Station Service,	6957845.2
31. Station Supplies,	5131819
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	297.1441
34. Hire of Equipment—Balance,	
Total carried forward,	41059 [illegible]

OPERATING EXPENSES—CONTINUED.

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	$10591490
35. Loss and Damage,	2978239
36. Injuries to Persons,	2517396
37. Clearing Wrecks,	1820083
38. Operating Marine Equipment,	3478523
39. Advertising,	6169942
40. Outside Agencies,	2270123
41. Commissions,	416982
42. Stock Yards and Elevators,	2818646
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	5409276
44. Rents of Buildings and other Property,	1671889
45. Stationery and Printing,	7425789
46. Other Expenses,	298066
TOTAL,	$51188469.C
GENERAL EXPENSES:	
47. Salaries of General Officers,	1064972
48. Salaries of Clerks and Attendants,	1600196
49. General Office Expenses and Supplies,	1708997
50. Insurance,	848520
51. Law Expenses,	792338
52. Stationery and Printing (General Offices),	1623044
53. Other Expenses,	200996
TOTAL,	$5236963
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	16757555
55. Maintenance of Equipment,	17742073
56. Conducting Transportation,	51188469
57. General Expenses,	5236963
GRAND TOTAL,	$92925661
PERCENTAGE OF OPERATING EXPENSES TO EARNINGS,	71.43

OPERATING EXPENSES—STATE OF ~~NORTH CAROLINA~~ Florida,

Maintenance of Way and Structures,	4975016
Maintenance of Equipment,	4181221
Conducting Transportation,	13864119
General Expenses,	1425134
TOTAL,	$2945126

RENTALS PAID.

A. RENTS PAID FOR LEASE OF ROAD.

NAME OF ROAD.	INTEREST ON BONDS GUARANTEED	DIVIDENDS ON STOCK GUARANTEED.	CASH.	TOTAL.
Central of Ga Ry			43500.00	43500.00
Wilmington Ry Bridge	542.50			542.50
TOTAL RENTS—A, [For entry on page 31 (or 32).]	542.50		43500.00	43925.00

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY OWNING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
Water Works Track	Montgomery Ala	Central of Ga Ry	139.48	
A & A RR	East Point Junction	A & A RR	156.00	
TOTAL,				295.48
YARDS:				
U Track	Lyons City Ala	A & A RR	207.38	
"	Gainesville "	G & G Ry	427.00	
Track to Lumber Co.	Durham NC	N & W "	5.00	
TOTAL,			709.38	709.38
TERMINALS: Freight Depot	Gleason Tenn	Nash & Nor Ry	105.00	
Pass Station	Cadenwood Ala	Geo. Sou. Co.	790.00	
Principal Facilities	Columbus Ga	C & G Ga RR Co	1946.15	
Yard & Ry Str.	Chattahoochee Fla	A & G Ga RR Co	1261.61	
" "	Alcorn Ga	Ga RR & Bkg Co	799.96	
Passenger Station	Montgomery Ala	L & N RR	1291.92	
" "	Savannah Ga	Savannah & Ga Ry	1232.45	
Columbus RR	Columbus "	Columbus RR	2076.50	
Terminals Facilities	Americus "	Ry Co of Ga	1225.00	
Wharves	Savannah "	Yard Co	125.00	
TOTAL,			11,999.96	12,999.96
		GRAND TOTAL RENTS—B, [For entry on page 45, item 45.]		54092.96

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1903.		ASSETS.	JUNE 30, 1904.		YEAR ENDING JUNE 30, 1904.	
ITEM.	TOTAL.		ITEM.	TOTAL.	INCREASE.	DECREASE.
	$ 232320060	Cost of Road—Page 27,		4680398167	135707847	
	6902997 58	Cost of Equipment—Page 29,		744363998	5406423	
	786228948	Stocks Owned—Page 37,		666811825		120616563
	33612500	Bonds Owned—Page 39,		68293342 3	19680923	
		Other Permanent Investments,				
	10850000	Leasehold Interest in Wilmington Pocahontas & Pt. Smith		10850000		
		Lands Owned,				
	260288249	Cash and Current Assets—Page 23,		227800655		32487594
		OTHER ASSETS:				
		Equipment Trusts,		8127500 0	8127500 0	
	75263751	Materials and Supplies,		69701060		5561711
		Sinking Fund,				
	1893667	Sundries,		15700460	14206837	
		Profit and Loss—Page 31 (or 33),				
	1257537 3433	GRAND TOTAL,		1316244526 2	58707182 9	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1903.		LIABILITIES.	JUNE 30, 1904.		YEAR ENDING JUNE 30, 1904.	
ITEM.	TOTAL.		ITEM.	TOTAL.	INCREASE.	DECREASE.
	62600000.00	Capital Stock—Page 17,		62500000.00		1
	05514770110	Funded Debt—Page 23,		61517347.89	6369467.79	
	03159215.79	Current Liabilities—Page 23,		03277890.38	1186545.59	
		Real Estate Mortgages,				
	2681658.7	Accrued Interest on Funded Debt not yet payable,		3163925.7	482267.0	
	1451832.0	Accrued Taxes not yet payable,		3210000.0	1758168.0	
	3061882.1	Reserve for acquiring outstanding Capital Stock of Baltimore City		985596.3		2076285.8
	1085000.0	Wilmington City Bridge Bonds		1085000.0	1	1
		Reserve Funds		05157.8773	05157.8773	
	917129.75	Sundries		2171442.90		2984495
	1647.8744	Profit and Loss—Page 31 (or 33),		799.51.52		849.3589
	125753.32433	GRAND TOTAL.		131624.52.63	5370718.29	

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IMPORTANT CHANGES DURING THE YEAR.- State of Florida 53 70

Here present statements as follows: 1. All Extensions of Road put in Operation. 2. Decrease in Mileage by Line Abandoned or Line Straightened. 3. All other important Physical Changes. 4. All Leases taken or surrendered. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Bonds issued. 8. All other important Financial Changes.

No 1 - 1.95 miles Turney Spur put in Operation
January 6th 1903
16.00 miles Alachua to Dunnellon put in operation
July 14th 1902

No 2 4.33 miles Turkey Creek Branch - Leased to Fla. West Shore RR
.77 " " " taken up - Spur
2.00 " " 38 M/P A & R/R. Turkey Creek Branch to Mines - taken up
2.00 " " of Amelia Beach Branch Leased to Steam Con Co

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SECURITY FOR FUNDED DEBT—PAGE 23.

CLASS OF BOND OR OBLIGATION.	WHAT ROAD MORTGAGED. FROM—	TO—	MILES.	AMOUNT OF MORTGAGE PER MILE OF LINE.	WHAT EQUIPMENT MORTGAGED.	WHAT INCOME MORTGAGED.	WHAT SECURITIES MORTGAGED.
1st Mtg. S.L.K.Ry 4% Bonds							
Ref. Col. Trust, 5 " "							
1st Mtg R.S.R 6 " "							
" " R.F.G 5 " "							
" " A.T.N 6 " "							
" " Ozark " " "	Main Line and Branches as returned on Page 4		255.25	2273662	Nil	None	Stocks and Bonds of Corporations.
" " C.C 4 " "							
" " Gen 5 " "							
" " S.W. Ext " " "							
" " F.C.P " " "							
" " " 2nd Ext " " "							
" " " Equal " " "							
" " S.W. Ext. " " "							
" " Low Bonds " " "							
Col. Trust 5% " " "							

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CLASS.	NUMBER.	TOTAL NUMBER OF DAYS WORKED.	TOTAL YEARLY COMPENSATION.	AVERAGE DAILY COMPENSATION.
General Officers,	7	2211	367416	1666
Other Officers,	9	3331	774030	246
General Office Clerks,	191	38510	7798231	202
Station Agents,	159	29682	4914309	166
Other Station Men,	189	100933	12085416	125
Enginemen,	120	29632	12999087	439
Firemen,	195	29632	4885757	165
Conductors,	86	20885	6195445	297
Other Trainmen,	233	49125	5658649	115
Machinists,	123	37485	7424269	270
Carpenters,	42	10126	2126821	210
Other Shopmen,	378	93057	14387933	155
Section Foremen,	126	47858	8455458	179
Other Trackmen,	1116	209479	19185289	92
Switch Tenders, Crossing Tenders, and Watchmen,	104	38889	5160204	133
Telegraph Operators and Dispatchers,	119	31501	5197877	165
Employees—account Floating Equipment,	6	2287	419359	183
All other Employees and Laborers,	742	96791	13865930	143
TOTAL (Including "General Officers"),	8369	868565	137850198	158
Less "General Officers,"	7	2211	367416	1662
TOTAL (Excluding "General Officers"),	8362	866354	137482782	155
DISTRIBUTION OF ABOVE:				
General Administration,	147	44057	1395423	317
Maintenance of Way and Structures,	1747	256807	27641746	108
Maintenance of Equipment,	5453	135648	8393903	176
Conducting Transportation,	1487	432308	7231206	167
TOTAL (Including "General Officers"),	8369	868565	137850198	158
Less "General Officers,"	7	2211	367416	1662
TOTAL (Excluding "General Officers"),	8362	866354	137482782	155
Total (Including General Officers) Entire Line	11678	3008771	475987738	158

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Florida

TRAFFIC AND MILEAGE STATISTICS—STATE OF ~~SOUTH CAROLINA~~.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES.		
		DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	625349			
2. Number of passengers carried one mile,	29 795251			
3. Number of passengers carried one mile per mile of road,	2451			
4. Average distance carried, miles,	4696			
5. Total passenger *revenue*—Page 35,		681053		
6. Average amount received from each passenger,			1 09	
7. Average receipts per passenger per mile,			02	286
8. Total passenger *earnings*—Page 35,		839220	34	
9. Passenger *earnings* per mile of road,		1113	05	
10. Passenger *earnings* per train mile,			70	424
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	1796027			
12. Number of tons carried one mile,	793 791199			
13. Number of tons carried one mile per mile of road,	896146			
14. Average distance haul of one ton, miles,	13433			
15. Total freight *revenue*—Page 35,		1820019	58	
16. Average amount received for each ton of freight,			1 01	236
17. Average receipts per ton per mile,			00	715
18. Total freight *earnings*—Page 35,		1960781	86	
19. Freight *earnings* per mile of road,		2600	47	
20. Freight *earnings* per train mile,			1	4475
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		2846805	07	
22. Gross earnings from operation per mile of road,		3775	65	
23. Gross earnings from operation per train mile,			2	3090
24. Operating expenses—Page 45,		1987512	58	
25. Operating expenses per mile of road,		2636	08	
26. Operating expenses per train mile,			1	02695
27. Income from operation—Page 31,		859292	49	
28. Income from operation per mile of road,		1139	57	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	5364470			
30. Average number of passenger cars per train mile,	67			
31. Average number of passengers per train mile,	26			
32. Mileage of loaded freight cars—North or East,	8771885			
33. Mileage of loaded freight cars—South or West,	6732830			
34. Mileage of empty freight cars—North or East,	2509017			
35. Mileage of empty freight cars—South or West,	4633451			
36. Average number of freight cars per train mile,	17 10			
37. Average number of loaded cars per train mile,	11 72			
38. Average number of empty cars per train mile,	5 41			
39. Average number of tons of freight per train mile,	169 09			
40. Average number of tons of freight per loaded car mile,	14 40			
41. Average mileage operated during year,	2589 90			
TRAIN MILEAGE:	MILES.	MILES.		
42. Mileage of revenue passenger trains,	* * *	499705		
43. Mileage of locomotives employed in "helping" passenger trains,		* *		
44. Percentage of "helping" to revenue train mileage, per cent,	Annual Statement	* *		
45. Mileage of revenue mixed trains,	* * *	235427		
46. Mileage of revenue freight trains,	* * *	1185105		
47. Mileage of locomotives employed in "helping" mixed and freight trains,		* * *		
48. Percentage of "helping" to revenue train mileage, per cent,	Annual Statement	* * *		
49. TOTAL REVENUE TRAIN MILEAGE,	* * *	1920237		
50. Mileage of nonrevenue trains,	* * *	103338		

TRAFFIC AND MILEAGE STATISTICS.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	9400918			
2. Number of passengers carried one mile,	112464504			
3. Number of passengers carried one mile per mile of road,	93046			
4. Average distance carried,* miles,	11.96			
5. Total passenger *revenue*—Page 35.		2981600	00	
6. Average amount received from each passenger,†			31	7
7. Average receipts per passenger per mile,†			2	65
8. Total passenger *earnings*—Page 35.		2557161	64	
9. Passenger *earnings* per mile of road,*		1246	55	
10. Passenger *earnings* per train mile,†			78	90
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63.	5115785			
12. Number of tons carried one mile,	774491941			
13. Number of tons carried one mile per mile of road,	246630			
14. Average distance haul of one ton,* miles,	150.1			
15. Total freight *revenue*—Page 35.		9119782	82	
16. Average amount received for each ton of freight,†			178	02
17. Average receipts per ton per mile,†			1	17
18. Total freight *earnings*—Page 35.		9269139	72	
19. Freight *earnings* per mile of road,*		2951	47	
20. Freight *earnings* per train mile,†			19	340
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35.		12720560	07	
22. Gross earnings from operation per mile of road,*		4051	41	
23. Gross earnings from operation per train mile,†			105	15
24. Operating expenses—Page 45.		9072506	61	
25. Operating expenses per mile of road,*		3451	42	
26. Operating expenses per train mile,†			71	27
27. Income from operation—Page 51.		3647054	26	
28. Income from operation per mile of road,*		1472	99	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	1865763			
30. Average number of passenger cars per train mile,*	4.70			
31. Average number of passengers per train mile,	29			
32. Mileage of loaded freight cars—North or East,	32552717			
33. Mileage of loaded freight cars—South or West,	32696204			
34. Mileage of empty freight cars—North or East,	7755002			
35. Mileage of empty freight cars—South or West,	17277859			
36. Average number of freight cars per train mile,*	17.29			
37. Average number of loaded cars per train mile,*	11.98			
38. Average number of empty cars per train mile,*	5.30			
39. Average number of tons of freight per train mile,†	164.06			
40. Average number of tons of freight per loaded car mile,*	13.06			
41. Average mileage operated during year,*	2610.97			
TRAIN MILEAGE:	MILES.	DOLLARS.		
42. Mileage of revenue passenger trains,		2461247		
43. Mileage of locomotives employed in "helping" passenger trains,	Cannot state			
44. Percentage of "helping" to revenue train mileage,* per cent,				
45. Mileage of revenue mixed trains,		658563		
46. Mileage of revenue freight trains,		11061104		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	Cannot state			
48. Percentage of "helping" to revenue train mileage,* per cent,				
49. TOTAL REVENUE TRAIN MILEAGE,		13522351		
50. Mileage of nonrevenue trains,		2154650		

* Two (2) decimal figures required. † Five (5) decimal figures required.

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FREIGHT TRAFFIC MOVEMENT. – State of Florida

(COMPANY'S MATERIAL EXCLUDED.)

	COMMODITY.	FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		WHOLE TONS.	WHOLE TONS.	WHOLE TONS.	PER CENT.
Products of Agriculture.	Grain,	7365	16046	23411	22
	Flour,	10485	10051	20536	19
	Other Mill Products,	6697	12535	19232	18
	Hay,	6582	11614	18196	17
	Tobacco,	630	165	795	01
	Cotton,	8598	3442	12040	11
	Fruit and Vegetables,	21670	16830	38500	36
	Melons	16626	512	17138	16
	Peanuts	374	079	453	00
Products of Animals.	Live Stock,	891	768	1659	02
	Dressed Meats,	50	963	1013	01
	Other Packing-House Products,	4060	6377	10437	10
	Poultry, Game, and Fish,	453	296	749	01
	Wool,	89	04	93	00
	Hides and Leather,	712	62	774	01
Products of Mines.	Anthracite Coal,	7208	1292	8500	08
	Bituminous Coal,	2096	9717	11813	11
	Coke,	830	726	1556	01
	Ores,		005	005	00
	Stone, Sand, and other like articles,	241056	26784	267840	253
	Gravel	66732	248371	315103	298
	Clay	4379	950	5329	00
Products of Forests.	Lumber,	339817	213354	553171	520
	Logs & Piles	67990	19643	87633	083
	Wood & Staves	25463	2416	27879	026
Manufactures.	Petroleum and other Oils,	7340	2794	9964	009
	Sugar,	1595	550	2145	002
	Naval Stores,	86448	38699	125147	118
	Iron, Pig and Bloom,	256	244	500	000
	Iron and Steel Rails,	946	1912	2858	003
	Other Castings and Machinery,	3042	4257	7299	007
	Bar and Sheet Metal,	7876	1635	9511	009
	Cement, Brick, and Lime,	31177	20131	51308	048
	Agricultural Implements,	77	165	242	000
	Wagons, Carriages, Tools, etc.,	796	497	1293	001
	Wine, Liquors, and Beers,	715	4930	5645	005
	Household Goods and Furniture,	1221	1042	2263	002
Merchandise,	Sundries	24998	12093	37091	035
	Cotton Factory Products	413	226	639	000
	Packing	30	189	219	000
		19913	15193	35106	033
Miscellaneous:	Other commodities not mentioned above,	26973	15695	42668	040
	Inter-Company - Florida Eastern Line	1096429	699598	1796027	1000
	TOTAL TONNAGE,	911089	1836447	4947336	10000

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	290270	1522		5765	240	300	261097		5707	255090
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	37218			1757			38975	2227	9916	29059
TOTAL MILEAGE OPERATED (All Tracks).	290488	1522		7522	240	300	300072	2227	15623	284449

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Virginia	15750						15750			15750
North Carolina	62057	254			240		62551		2708	57843
South Carolina	34088						34088			34088
Georgia	58584	500		5765		300	65549			64849
Alabama	8160						8160			8160
Florida	74631	768					75399		2999	72400
TOTAL MILEAGE OPERATED (Single Track).	253270	1522		5765	240	300	261097		5707	255090

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Virginia	15750			15750			15750	
North Carolina	62057	254		62311		2708	57603	
South Carolina	34088			34088			34088	
Georgia	55084	500		57084			57084	
Alabama	8160			8160			8160	
Florida	74631	(+) 1201		75832		2999	72833	(+) Includes Turkey Creek Spur from Turkey Creek to Duval #33 Miles and 2 miles Amelia Beach Line which are L.S.S.
TOTAL MILEAGE OWNED (Single Track).	253470	1955		255425		5707	249718	

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MILEAGE—STATE OF ~~SOUTH CAROLINA~~ Florida

A. MILEAGE OF ROAD OPERATED (ALL TRACKS)

LINE IN USE	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	74631	768					75399	1195	3165	72234
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,										
TOTAL MILEAGE OPERATED (ALL TRACKS),	74631	768					75399	1195	3165	72234

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF ~~SOUTH CAROLINA~~ Florida	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	74631	768					75399	1195	3165	72234
TOTAL MILEAGE OPERATED (SINGLE TRACK),	74631	768					75399	1195	3165	72234

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK.)

STATE OF ~~SOUTH CAROLINA~~ Florida	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	74831	1201		76032	1195	3165	72867	
TOTAL MILEAGE OWNED (SINGLE TRACK),	74831	1201		76032	1195	3165	72867	

67 B

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Virginia								2,622,165
North Car								109,410 39
South "								86,708 45
Georgia								104,231 17
Alabama								135,223 39
Florida								125,949 46
TOTAL,								4,241,952 70

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
		— None —						
TOTAL,								

178

OATH.

79

State of Virginia
City
County of Portsmouth } ss:

WE, THE UNDERSIGNED, J M Parr, President,
and T H Roby, Comptroller
of the Seaboard Air Line Railway Company,
on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information, and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth, except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said Company during the period for which said return is made.

Signed J M Parr
President.
(Or other Chief Officer.)

Signed T H Roby ~~Treasurer.~~ Comptroller
(Or other Officer in charge of the Accounts.)

SUBSCRIBED AND SWORN TO before me
this ..... day of ....., 190 .

~~755~~ 180

186–189 And thereupon the said Seaboard Air Line railway to further maintain the issue in its behalf offered in evidence the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, and the same was filed in evidence and is in the words and figures following, to-wit:

190–200 Report of the Railroad Commission

Office of the Railroad Commission.

STATE OF FLORIDA,
TALLAHASSEE, March 1, 1904.

To his excellency W. S. Jennings, governor of Florida.

SIR: The railroad commissioners of the State of Florida have the honor to submit to you herewith, in accordance with the requirements of the laws of Florida, their seventh annual report for the year ending March 1, 1904.

* * * * * * *

201 Joint Rates.

Probably one of the most important acts of the railroad commission during the year was the adoption of order No. 35, amending rule No. 19, governing joint rates.

Rule 19 of the rules and regulations, prescribed by the *the* commission for the transportation of freight, required that the maximum rate charged on shipments originating and terminating within this State which passed over the whole or parts of two or more roads not under the same control, should be the sum of the local rates for the distance hauled over each road.

While the commission could not see their way clear to order into operation a straight mileage rate for shipments passing over two or more roads, still they were of the opinion that the sum of the local rates was unreasonably high, and it was determined to take the matter up with the railroads with a view of making a reduction. A meeting of the commission was held at Jacksonville on November 17th, 1903, and the railroads were given an opportunity to show cause why rule 19 should not be amended to meet the views of the commission. The railroad companies were represented at this meeting by their traffic officials and protested against any reduction of joint rates, but especially requested that if the commission were determined to reduce these rates, that they except classes L, N, O and P, which classes the representatives of the roads contended were already very low.

After due consideration the commission decided to make this exception and issued their order, No. 35, amending rule 19, fixing the maximum rate on all freights, originating and terminating in this State, except classes L. N. O and P, which pass over the whole of

two or more roads, not under the same control, at the sum of the local rates, for the distance hauled, less ten per cent.

202–205 This reduction will amount to a large saving in freight charges to the people of the State.

* * * * * * *

206 "Cannot Prevent Advances.

"There is now no way in which these advances can be prevented. If they are just and reasonable they ought not to be prevented. In cases where the reasonableness of charges is fairly in doubt the benefit of that doubt should be given to the railways; but it is impossible to contemplate with indifference the fact that the results of all the recent improvements in transportation facilities is an increase in the transportation charge, or to remember with indifference that this species of property now possesses the power to tax unjustly every other species of property. If these charges are unreasonable, they are a most insidious means of taking unjustly from the general body of the public for the benefit of the few, and some means should be devised by which this can be prevented."

The foregoing from the Interstate Commerce Commission shows that the raising of interstate rates has been general over the whole United States, and not confined to Florida. There has been a very general raise of interstate rates in Florida, which the railroad commissioners have been unable to prevent. Local rates have not been raised, and in many instances during the past year have been materially reduced. The general raise in interstate rates, however, demonstrates that there would have been a raise in local rates if

207 Florida did not have a railroad commission to restrain and prevent it.

* * * * * * *

208 Merchandise Rates.

In our last annual report we stated in detail the steps that were taken by the commission in ordering into effect a reduction on merchandise rates, to be operated by the Seaboard Air Line and Atlantic Coast Line railroads. The commission's order required that this rate should become effective July 1, 1904. At the appointed time the railroads put the rate into operation.

This reduction affected a large part of all the freights hauled by the Seaboard Air Line and Atlantic Coast Line railroads in Florida. For distances of 150 miles and over 140 miles the reduction on such articles as shoes, books, medicines, not otherwise specified, and mowing machines was 10 cents per 100 pounds. On bedsteads and bureaus, 7 cents per 100 pounds; on corn mills and cane mills, hoes and plow handles, 3 cents per 100 pounds; on brick in less than carload quantities, 8 cents per 100 pounds, and on lumber in less than carload quantities, 4 cents per 100 pounds; on bacon and

hams packed in wood, 1 cent per 100 pounds. On corn and oats, 2 cents per 100 pounds; on flour, 4 cents per barrel; on household goods and live stock, $3.00 per carload.

The above is given to show how the reduction affects a few staple articles for a certain distance. The reduction is about the same for all distances between points on the lines of the above named railroads, and affects practically all articles in less than carload quantities, and a few in carload quantities.

The above figures show the difference between the rate formerly authorized by the railroad commission, and the one now prescribed by them for the Atlantic Coast Line and Seaboard Air Line railroads. Between some points in the State, the railroads prior to July 1, 1903, operated what are known as special rates; that is, rates less than those allowed by the commission, so that when railroads were required to put down their rates to those of the commission, at those points where the special rates were in force, the reduction was not as much as given above, and in a very
209–239 few instances the rate was actually raised. While the commission regret that it should have been necessary to raise the rate at any point, yet unless there was competition of some kind to justify it, the commission do not consider these special rates to have been just. The courts have decided that competition is a sufficient reason for a special rate, but where there is none, and where conditions are practically the same, the commission is of the opinion that rates between all points the same distance apart should be alike.

The reduction in merchandise rates, while it may seem small when considered in relation to any one article, yet when we consider that it affects every article of clothing, every article of household furniture and everything that we eat, it can readily be seen what a saving it will be in the aggregate to the people of Florida in the course of a year.

* * * * * * *

240 Order No. 35.

Railroad Commission, State of Florida.

Amendment of Rule 19, Governing Joint Rates.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 17th day of November, A. D. 1903, for the purpose of considering the adoption of an amendment to rule 19, governing joint rates, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed amendment should not be adopted.

At the request of the railroad companies the hearing was advanced to 2:30 p. m., November 16th, at the board of trade rooms in the

city of Jacksonville, at which time the railroads were given an opportunity to be heard, and the commissioners being satisfied that the proposed amendment was reasonable and just;

It is therefore ordered by the railroad commissioners of the State of Florida, that rule 19 of the rules and regulations of the Florida railroad commission, governing the transportation of freight is hereby amended to read as follows:

241–273 "On all shipments of freights except classes L, N, O, & P, not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole or portions of two or more roads, not under the same control, the maximum rate charged on such shipments shall not be greater than the sum of the local rates on such freights less ten (10) per cent. for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination, shall be divided in such proportions between the roads over which such freights pass, so as to give to each road interested in the shipment its local rate less ten (10) per cent. for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point.

On classes L, N, O. & P, the joint rate shall not exceed the sum of the local rates on such freight.

Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest."

It is further ordered, that the amendment to rule 19 set out above be effective on all the railroads and common carriers doing business wholly or in part within the State of Florida on and after January 20th, 1903.

Done and ordered by the railroad commissioners of the State of Florida, in session at their office in the city of Tallahassee, Florida, this 22nd day of December, A. D. 1903.

(Signed) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

* * * * * * *

275 Gross Earnings from Operation of Railroads in Florida During the Twelve Months Ending June 30, 1903.

Railroads reporting.	Passenger train earnings.					Total freight earnings.	Total other earnings.	Total gross earnings from operations.
	Passenger revenue.	Mail revenue.	Express revenue.	Extra baggage, storage and other items.	Total passenger earnings.			
Atlantic Coast Line	$751,371 39	$143,590 05	$84,761 33	$7,173 81	$986,896 58	$2,246,-89 73	$98,680 85	$3,331,967 16
Alabama and Florida Div., L. & N.	43,813 16	3,750 63	1,559 28	1,026 14	49,940 21	143,965 16	713 18	194,618 55
Carrabelle, Tallahassee and Georgia	20,712 84	3,826 52	3,245 41	290 90	28,075 67	32,480 48	13,723 92	74,280 07
Florida East Coast	788,948 12	80,368 20	158,717 13		1,028,033 45	901,280 18	88,893 53	2,018,207 16
Gainesville and Gulf	10,545 02	1,813 24	6,510 17		18,868 53	39,004 51	480 00	58,352 94
Georgia, Florida & Alabama	9,356 42	759 05	305 86		10,421 31	15,095 91	297 76	25,815 00
Georgia Southern and Florida	90,782 6-	7,685 34	19,629 73	478 61	118,576 35	118,111 48	18,569 58	255,257 21
Jacksonville and Southwestern	10,126 93	1,50- 00		46 83	11,673 76	191,994 70	1,252 90	204,921 36
Live Oak and Gulf	908 60	757 44			1,756 04	11,570 76	1,396 76	14,723 56
Pensacola Div. of the L. & N.	97,660 05	4,644 60	9,1-5 03	1,939 03	113,359 71	393,790 19	29,363 87	536,513 77
Pensacola and Atlantic Div. L. & N.	145,667 23	13,956 05	9,189 10	3,380 -2	172,192 80	346,199 28	4,488 62	522,88- 70
Seaboard Air Line	681,033 44	68,260 38	80,868 84	9,066 68	8-,229 34	1,960,731 86	46,843 87	2,846,805 07
South Georgia	11,946 08	1,792 34	137 45		13,875 87	44,650 58	2,443 02	60,969 47
Suwannee and San Pedro	8,750 33	256 23	17 18		9,003 74	30,645 60		39,649 34
Tavares and Gulf	1,242 20	1,258 12	878 69		3,379 01	11,092 25		14,471 26
Valdosta Southern	5,958 -2	6-1 60			6,560 12	13,477 65		2-,037 77
Yellow River	10,538 37	698 82	133 93		11,371 12	76,140 45	1,568 23	89,0-9 80
St. Johns Terminal Co.						8,301 75	74,353 10	82,654 85
Totals	$2,689,4-1 37	$335,518 61	$374,870 13	$23,393 42	$3,423,213 53	$6,584,922 52	$383,068 99	$10,391,205 04

Railroads reporting.	Maintenance of ways and structures.	Maintenance of equipment.	Conducting transportation.	General expenses.	Total operating expenses.	Percentage of operating expenses to gross earnings.
Atlantic Coast Line	$490,299 39	$353,142 77	$1,013,414 89	$93,036 94	$1,949,893 99	58.52
Alabama & Florida Div. L. & N.	5,081 75	3,127 85	7,759 06	424 09	16,392 75	71.50
Carrabelle, Tallahassee and Georgia	15,640 24	12,627 41	25,330 38	10,364 26	63,962 29	86.11
Florida East Coast	344,830 13	193,578 90	732,809 23	80,374 52	1,351,592 78	66.97
Gainesville and Gulf	10,446 26	5,608 52	19,834 37	6,470 79	42,359 94	72.10
Georgia, Florida & Alabama	8,326 73	4,765 44	14,076 41	3,587 18	30,755 76	115.30
Georgia Southern and Florida	54,232 14	65,813 86	101,007 51	14,961 49	236,015 00	92.46
Jacksonville and Southwestern	33,711 50	25,870 80	67,091 57	11,472 25	138,146 12	67.41
Live Oak and Gulf	4,027 23	910 91	4,915 48	1,092 40	10,946 02	74.34
Pensacola Div. L. & N.	120,476 00	62,851 19	176,746 67	10,399 05	370,472 91	69.05
Pensacola and Atlantic Div. L. & N.	117,995 06	74,649 93	157,001 18	15,104 77	364,750 94	69.76
Seaboard Air Line	427,850 16	418,122 10	1,386,641 18	142,513 14	2,375,126 58	83.43
South Georgia	1,640 60	1,020 79	3,795 76	1,292 98	7,750 13	94.00
Suwannee & San Pedro	6,785 59	1,384 15	12,017 05	2,489 38	22,676 17	157.20
Tavares and Gulf	5,360 21	2,868 22	4,801 62	2,478 76	15,508 81	07.08
Valdosta Southern	2,689 59	436 15	4,338 29	2,994 58	10,458 61	52.22
Yellow River	25,891 70	9,838 14	42,869 28	3,931 76	82,530 88	92.75
*St. Johns Terminal Co	9,338 09	5,586 87	32,303 38	5,259 85	52,488 19	63.50
Totals	$1,684,622 37	$1,242,204 00	$3,806,753 31	$408,248 19	$7,141,827 87	

*From Nov. 1st, 1902 to June 30, 1903.

Names of railroads.	Miles of main track.	Miles of yard track and siding.	Miles of branches and spurs.	Total mileage operated.
Atlantic Coast Line	896.58	159.07	332.53	1,388.18
Alabama & Florida	11.83	1.07	.....	12.90
Carrabelle, Tallahassee and Georgia	50.00	3.58	.....	53.58
Florida East Coast	484.95	53.94	.....	538.89
Gainesville and Gulf	48.00	2.00	.....	50.00
Georgia, Florida and Alabama	23.59	1.13	.....	24.72
Georgia Southern and Florida	152.36	17.02	.....	169.38
Jacksonville and Southwestern	85.60	6.00	.....	91.60
Live Oak and Gulf	18.00	.....	2.00	20.00
Pensacola Div. of the L. & N	46.77	29.18	.....	75.95
Pensacola and Andalusia	20.00	1.00	.....	21.00
Pensacola and Atlantic Div. L. & N	160.47	10.03	.....	170.50
Pensacola, Alabama and Tennessee	23.30	2.35	.....	25.65
Seaboard Air Line	746.31	.....	7.68	753.99
South Georgia	12.41	.....	.....	12.41
Suwannee & San Pedro	43.00	.....	.....	43.00
St. Johns Terminal Co	6.39	10.97	.....	17.36
Tallahassee Southeastern	20.00	.....	.....	20.00
Tavares and Gulf	31.64	1.38	.....	33.02
Valdosta Southern	13.00	.....	.....	13.00
Yellow River railroad	25.90	.....	.....	25.90
Total	2,929.10	298.72	342.21	3,561.03

278 And thereupon the said Seaboard Air Line railway announced that it had no further testimony to introduce in the cause, and the State of Florida upon the relation aforesaid, announced that it had no testimony to introduce.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said respondent did, on the 23rd day of December, 1904, during said term, propose this its bill of exceptions, to the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and request him to sign the same, which is done this 23rd day of December, 1904.

[Seal of the Supreme Court of Florida.]

R. F. TAYLOR, [SEAL.]
Chief-Justice of the Supreme Court
of the State of Florida.

279 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one to two hundred and seventy-eight (278) inclusive constitute a true copy of all of the proceedings, of all orders made and of all opinions filed by the supreme court of Florida, and a correct transcript of the record of the judgments rendered by the said supreme court of Florida in the case of The State of Florida *ex rel.* W. H. Ellis as attorney general of said State and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, vs. Seaboard Air Line Railway, a corporation under the laws of Virginia and North Carolina, as appear upon the files and records of my office; also the original writ of error from the Supreme Court of the United States to the supreme court of Florida in this cause, and the original citation to the defendant in error and acceptances of service thereof, and the original assignment of errors in the Supreme Court of the United States on said writ of error.

Which said transcript, annexed hereto, together with said original writ of error, original citation and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, the capital, this 29th day of December, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

280 Supreme Court of the United States, October Term, 1905.

SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Plaintiff in Error, vs. THE STATE OF FLORIDA *ex rel.* W. H. ELLIS, as Attorney-General, *et al.*, Defendants in Error.	No. 156, October Term, 1905.

In pursuance of the rules and practice of this court, it is hereby stipulated by and between counsel of record in this case, that all of the record in the above cause shall be printed except the portions thereof as to which it is hereinafter stipulated that there shall be no printing, to-wit:

First. The petition for the alternative writ of mandamus shall not be printed.

Second. None of the report of the Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and to be found in the bill of exceptions, shall be printed except the following parts thereof, to-wit:

Print pages 1, 9A, 9, 11, page 17 and explanatory remarks to be found on page 16, and to follow page 17 immediately, page 19, page 21 and explanatory remarks on page 20, to follow page 21 immediately, pages 23, 25, 27, 29, 31 and explanatory remarks on page 30, to follow page 31 immediately, pages 33, 35, and 37 and explanatory remarks on page 36 to follow page 37 immediately, page 39 and explanatory remarks on page 38 to follow page 39 immediately, pages 41, 43, 45, 47, 49, 51, 53, 57, 59, 61A, 61, 63, 67, 67B, 79 and 81.

Third. None of the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, to be found in the bill of exceptions in said cause, shall be printed, except that the following parts thereof shall be printed, to-wit:

All of page 5, down to but excluding the heading "Complaints." All of pages 16 and 17, beginning with the heading "Joint rates" on page 16, and ending with the word "State," at the end of
281 the second line on page 17. That part of pages 21 and 22, commencing with the heading "Can not prevent advances," on page 21, and ending with the word "it," at the end of the first line on page 22. All of page 23, commencing with the words "Merchandise rates," and all of page 24, down to and including the word "year," at the end of the second paragraph on said page 24. All of pages 56 and 57, commencing with the heading "Order No. 35," on page 56, down to the end of page 57. The three tables of statistics,

including such heading, to be found at the end of such report under the heading "Statistics."

GEO. P. RANEY,
Attorney for Plaintiff in Error.
W. H. ELLIS,
Attorney-General,
J. M. BARRS,
Special Counsel,
Attorneys for Defendants in Error.

Nov. 14th, 1905.

282 [Endorsed:] File No. 19592. Supreme court U. S. October term, 1905. Term No. 156. Seaboard Air Line Railway, P. E. vs. The State of Fla. *ex Rel.* W. H. Ellis att'y gen'l, *et al.* Stipulation to omit parts of record in printing. Filed Nov. 20, 1905.

Endorsed on cover: File No. 19,592. Florida supreme court. Term No. 156. Seaboard Air Line Railway, plaintiff in error, vs. The State of Florida upon the relation of W. H. Ellis, as attorney general of said State, *et al.* Filed January 6th, 1905. File No. 19,592.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 23 1906
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. [redacted]9

ATLANTIC COAST LINE RAILROAD CO.,
Plaintiff in Error,

vs.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN E. HARTRIDGE,

Attorney for Plaintiff in Error.

The Floridian

IN THE SUPREME COURT OF THE UNITED STATES.

ATLANTIC COAST LINE RAILROAD COMPANY,

Plaintiff in Error,

vs.

STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY-GENERAL OF SAID STATE, AND J. M. BARRS, AS SPECIAL COUNSEL FOR THE RAILROAD COMMISSIONERS OF SAID STATE.

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

On January fifteenth, 1904, the Railroad Commissioners of the State of Florida, after a hearing had, at which the Defendant in Error was represented, made the following order:

It is further ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is therefore ordered, that where a shipment of phosephate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

On March eighth, thereafter, he Defendant in Error, by its Attorneys, presented and filed in the Supreme Court of the State of Florida, its petition and motion for a mandamus against the Plaintiff in Error, reciting the proceedings of the Railroad Commission and its order, and alleged that the Plaintiff in Error had refused to comply with the order of the Railroad Commission.

On March twelfth, 1904, an alernative writ of mandamus was issued on the petition and motion before referred to, citing the Plaintiff in Error to show cause, on March twenty-ninth, 1904, why it refused to obey the order of the Railroad Commission.

On March twenty-ninth, 1904, Plaintiff in Error filed a demurrer to the alternative writ upon six several grounds.

See page 14 of the record.

Argument upon the demurrer coming on to be heard, and on the twenty-eighth day of June, 1904 the Su-

preme Court of the State of Florida filed its opinion, overruling the demurrer.

See pages 16 to 25, inclusive, of record.

An order was made upon the overruling of the demurrer requiring the Plaintiff in Error to file its return showing obedience to the mandate or why it was not obeyed, by Tuesday, July twelfth, following, which time was, by order of the Court duly made, extended to the first Monday in August, 1904.

On July eighteenth, 1904, Plaintiff in Error filed its return, setting up five distinct and several grounds as to why said order had not been obeyed.

The first four grounds were based upon the opinion of the Court rendered upon the demurrer of Plaintiff in Error to the alternative writ of mandamus. The fifth return was to the effect that the enforcement of the writ of the Railroad Commission would result in depriving the Plaintiff in Error of its property without due process of law.

On July twenty-sixth, 1904, the Defendant in Error filed its motion to quash the five returns of the Plaintiff in Error.

By leave of the Court, on July twenty-ninth, 1904, the Plaintiff in Error amended its fifth return so as to make it read as follows:

"That the passenger and freight tariffs prescribed by the Railroad Commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule of tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida Railroad Commis-

sion will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof."

On July twenty-ninth, 1904, the Defendant in Error again filed its motion to quash all of the returns, including the amended fifth return, of the Plaintiff in Error.

On July thirtieth, 1904, the Supreme Court of Florida made an order that the motion of the Defendant in Error, as to the first four returns, be granted, and as to the amended fifth return, denied.

Thereupon, a joinder of issue was had upon the amended fifth return and the time named for taking the testimony before the full Bench of the Supreme Court of Florida, in open Court.

Upon the hearing had upon the testimony submitted, the Court held that the rate in question was not unreasonable and that said rate taken in connection with the other rates prescribed by the Railroad Commission did not deprive the Plaintiff in Error of its property without due process of law nor deprive it of the equal protection of the law, within the inhibition of the Federal Statute.

ASSIGNMENTS OF ERROR.

The fourth, fifth, sixth and seventh assignments of error cover the Federal question involved in this case, and are as follows:

Fourth. The court erred in its final judgmenut awarding the peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the Railroad Commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibiton of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the Railroad Commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said Railroad Commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

ARGUMENT.

The testimony shows that the cost of material used in the railroads, and salaries of employes, have materially increased, and that the expense of handling local or State trafic is greater than in handling inter-state or through traffic, by at least twenty or twenty-five per

centum for the reason that in handling inter-state business the freights are carried through without additional expense incurred in handling intra-business in the way, of handling, delivery and shifting, side-tracks, warehouses, and men to handle the same.

Referring to the particular commodity involved, Mr. W. B. Denham, who was, at the time of testifying, General Superintendent of the Division, testified as follows:

"With reference to comparing phosphate freight with other heavy freights phosphate is the most expensive freight we handle. In the first place, it is a very hard material on the cars. We are compelled to handle it in cars so as to exclude moisture, and therefore must use box cars. It is not an infrequent occurrence for us to have cars burned every month by the miners loading hot rock into them. In the handling of the trafic, in order to save the miners demurrage on their stuff, they give us notice they will have boats in a port at a certain time, probably 15 or 20 days before the boat is due. We naturally put off delivery of the cars, under this notice, just as long as it is possible in order to get the phosphate to the port in time to load the boat. It frequently happens that there are three or four ships due about the same time. Of course the road cannot afford to run its cars to the mines 15 or 20 days ahead and hold them until the ships arrive. We wait until the last minute and, of course, that means extra service. The empties are run in, and about the time they are gotten there the miner has some of those cars ready to go back. The engine and crew that take a train down have to go back with it, to even up the power. Whenever we return a train south we must have one going north, so as to have engines at both ends of the line. Just about the time we have 200 or 300 cars to move probably the last train load will commence getting some of

the loads going back on the ship, and we have to run light engines to take the loads back. Of course we try to give an engine going south a load. With three ships due at the same time, if you get the phosphate aboard you have about 600 cars tied up, and if the ships do not arrive on time the cars are tied up until they do arrive. From my actual experience we have held cars 15 or 20 days, and sometimes 30 days, for a ship and for which the phosphate miner paid no demurrage. Not only that, but it necessitates having switching engines at the mines. The phosphate may be loaded from three or four mines, and we have to have a crew and engine to give the mines regular shifts. Sometime we can load only five or six cars at a shift, and this requires the engine to go at certain hours, put in its empties and bring this out to the main line before being attached to a through crew. There are expenses attached to the port. It is necessary to keep an engine at the port to shift the cars from the ship; as the stuff is taken out the empties must be pulled out and loads put in.

COST OF REPRODUCTION.

The testimony as to the cost of re-production, was as follows:

"I have been engaged with railroad construction and am familiar with the mileage of the Atlantic Coast Line Railroad Company in Florida. I have been over and exemained every mile of it. Taking that mileage as an entirety, in my judgment, if the money were economically, honestly and wisely expended, to-day, taking the terminals and everything into consideration, I suppose it could be replaced at a cost of $20,000 per mile. Relative values are higher to-day than formerly;

the cost of material is higher; and the property over which these railroads are laid has increased in value; that is, if you had to reproduce them and recondemn to-day.

"I understand from my experience and actual operation that the cost of operating a railroad for intrastate trafic, as separate and apart from inter-state trafic, would be 25 per cent. additional; that is, if it cost 60 per cent. to operate all of the lines there should be added 25 for the cost of operation of its local or intra-state traffic, if it was all local traffic."

CASH VALUE.

As to cash value, the testimony was as follows:

"Referring to the cash value of the property, I think we might be able to sell it for $10,000 per mile. It would not bring over 2 or 3 per cent. interest on $10,000 per mile at its present earnings. There are about 1265 miles in Florida. There is a total mileage in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida of about 4,000 miles."

FREIGHT RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is R. S. McIver. I am 42 years old. I am auditor of the freight receipts of the Atlantic Coast Line Railroad Company, and have been since July 1, 1902. Prior to that time I was connected with the roads

of the Plant system, which now compose the Atlantic Coast Line by consolidation, and was then auditor of both freight and passenger receipts. I have occupied that position since 1885. I handle freight earnings and have made a compilation of the freight earnings for the year ending June 30, 1904, I mean for Florida intra-state business. The data and figures were taken from the original reports of the agents. The agents send their reports in monthly and I bind them every month as soon as I finish their examination. The figures that I now have are taken from the reports of twelve months. The freight earnings of the Atlantic Coast Line Railroad Company for Florida's intra-state business for the year ending June 30, 1904, were $871,926.41."

PASSENGER RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is George B. LeGrand. I am 42 years old. I am auditor of passenger receipts for the Atlantic Coast Line Railroad Company, and have been since July first, 1902. I have been connected with the Atlantic Coast Line Railroad Company since 1882, holding various positions in the clerical department—in the accounting department. I have made a compilation of the passenger earnings of the Florida business of the Atlantic Coast Line for the year ending June 30, 1904. I have made same from our agents' reports and conductors' reports of which I have charge. I have filed them each month, some are bound and others are not. They are all filed together, however. The passenger earnings on intra-state business for the ear ending June 30, 1904 were $678,326.80, which, added to the freight earnings, $871,926.41, on intra-state business, make a total of $1,550,253.21.

RECAPITULATION.

SHOWING RECEIPTS FROM ALL SOURCES, OF INTRA-STATE BUSINESS.

The total intra-state freight and passenger earnings for Florida for the year ending June 30, 1904, were $1,550,253.21. The total mileage in Florida is 1263.74 miles. Taking the cost of operaton at 56.7 per cent., it would amount to $ x; add to this the taxes paid $162,928.23 and we will have a total of $ x;—leaving the net earnings $508,331.41, which, at a valuation of $8,000 per mile, would equal 5.3 per cent; at a valuation of $10,000 per mile 4 2-100 per cent. Taking the cost of operation as 66.7 per cent., it would amount to $1,034,018.89; add to this the taxes paid, $162,928.23, we would have a total of $1,196.12,—leaving the net earnings $335,306.09 on a mileage of 1263.74, which, at a valuation of $8,000 per mile, would equal 3.49 per cent; at a valuation of $9,000. 3. 11per cent; and at a valuation of $10,000 per mile 2.79 per cent., as the net profits received from the intra-state business done in Florida.

The entire earnings of the Atlantic Coast Line Railroad Company on all traffic of all classes in Florida, both intra-state and inter-state, for year ending June 30, 1004, were as follows:

Freight earnings	$2,480,289.60
Passenger earnings	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	50,329.20
Other sources	52,243.85
Making a total of	$3,903,012.70

FEDERAL QUESTION INVOLVED.

The Federal question involved may be presented in two several ways, and is properly divided:

First. Whether the Plaintiff in Error is earning its operating expenses, taxes, and a reasonable return on the money invested.

Second. Whether a reasonable rate is not understood to be a rate reasonable as an entirety? In other words, if a rate is reasonable for a long haul and unreasonable for a short haul, is not the rate as an entirety an unreasonable rate?

QUESTION OF LAW UPON WHICH CASE OF PLAINTIFF IN ERROR IS BASED.

The question involved is, whether Plaintiff in Error in the operation of that portion of its line situated entirely in Florida has a right to earn sufficient revenue from the State passenger and freight business done upon said division, to pay operating expenses, taxes, and a reasonable return upon its investment?

THE FLORIDA RAILROAD COMMISSION, IN FIXING FUTURE RATES, DOES NOT ACT AS A COURT.

The power to fix future rates is legislative and not juduicial.

167 U. S., page 499 I. C. C. vs. C. N. O. & T. P. R'y.

The Florida Railroad Commission, in fixing future rates, acts in a legislative capacity. Whatever judicial power it may have in regard to other matters, it does not act judicially when it assumes to fix rates.

98 Fed. Reporter, 341—2, W. U. T. Company vs. Myatt.

Even if the Legislature of Florida had denominated the Commission a court, it would not be conclusive as to the nature of the jurisdiction and powers conferred upon it. That question is not to be determined by any terminology employed in the Act.

98 Fed. Rep., pages 346, 349, W. U. T. Company vs. Myatt.

It may be premised, however, here, that Mr. Justice Brewer said in the Dey case: "Compensation implies three things—payment of the cost of service, interest on bonds, and then some dividend;" 'adequate dividend', subsequent cases say. These, then are the factors of compensation to be applied.

78 Fed. Rep., page 262, Southern Pac. Co. vs. Board of Railroad Commissioners.

In the case of Milwaukee Electric Railway and Light Company vs.. Milwaukee it was held that an ordinance was void under the 14th amendment, as depriving the company of its property without due process of law which required a street railroad compnay to reduce its rates, "when the road was only making yearly net earnings of 3.3 per cent., to 4.5 per cent. on its bona fide investment, and payng 5 per cent. interest on its bonds, in a city where the current rate of interest on first mortgage real estate security is 6 per cent.

87 Fed. Rep. page 577.

RATE OF INTEREST IN FLORIDA.

In arriving at what is a reasonable earning upon money invested, the statute of a State, as to interest charges allowed in the absence of a contract, is germane.

The Revised Statutes of Florida, 1892, Section 2320, provide that, "in all cases where interest shall accrue without a special contract for the rate thereof the rate shall be eight per cent. per annum, but parties may contract for a less or greater rate by contract in writing."

The method employed by the Plaintiff in Error to demonstrate that its earnings from State passenger and freight business in Florida do not exceed its operating expenses, taxes and a fair return upon the value of its lines wholly within Florida, derived from State passenger and freight business, is taken from the opinions of the Supreme Court of the United States in the cases of Smyth vs. Ames.

169 U. S., page 466., and
C. M. & St. P. R'y vs. Tompkns, 176 U. S., page 177.

"A State law, or regulations made thereunder, es-
"tablishing rates for transportation by railroad that will
"deprive the carrier of just compensation, is repug-
"nant to the 14th Constitutional Amendment, as depriv-
"ing the carrier of his property without due process of
"law, and denying to it the equal protection of the laws.

"While the State may fix rates of transportation,
"the question whether the rates are so unreasonably
"low as to deprive the carrier of its property without
"such compensation cannot be determined by state stat-
"ute or regulations thereunder so conclusively that the
"matter may not become the subject of judicial inquiry.

"The reasonableness or unreasonableness of rates "precribed by a State for the tranportation of persons "and property wholly within its limits must be deter- "mined without reference to he inter-state business done "by the carrier, or to the profits derived from it.

"Railroad rates should be fixed with reference to "the fair value of the property used and services ren- "dered, and not merely to pay expenses, interest and "dividends, nor in order to realize profits upon an exces- "sive valuation or a fictitious capitalization."

Smyth vs. Ames, 169 U. S., page 466.

The testimony of one of the witnesses in the case of Smyth vs. Ames was to the effect that it cost from 10 per cent. to 20 per cent. more for local than for through freight, and another, that the cost of a short haul was reasonably double a long haul, and the court in considering that case allowed 10 per cent. additional to be added to the through freight in reaching the cost of the local freight.

In the case at bar, the testimony of Mr. Denham, General Superintendent, showed that it would cost 25 per cent. more in Florida for inter-state trafic than it would for intra-state traffic.

The cases above cited, which hold that a railroad company is entitled to earn a sufficient amount to pay operating expenses, taxes, interest upon mortgage bonds, and some dividends to the stockholders, would, *a fortiori*, hold that a railroad company which owned no mortgage bonds, would be entitled to earn operating expenses and taxes, and, in addition, dividends for its stockholders equal to what the interest upon the mortgage bonds would have been, if such bonds were outstanding.

And so, the cases which hold, that the stockholders are entitled to dividends equal to, or approximating the legal rate of interest, would, *a fortiori*, hold that the stockholders were entitled to dividends equal to 4 per

cent. upon the present actual value of a road, located in a State where the legal rate of interest, as in Florida, is 8 per cent.

The testimony of Mr. Denham, General Superintendent, who surveyed and built the most of the division in Florida of the Plaintiff in Error, shows that it would cost $20,000 per mile to replace the property, wisely, honestly and economically expended; that on the market it could probably be sold for $10,000 per mile, cash. This, however, is not a criterion of its value upon the basis of which it should be allowed earnings; but, rather, the cost of reproduction of the property should be the test.

TABULATION.

As shown by the record, the order of the Commissioners provides that the rate to be charged by all railroads and common carriers doing busuiness wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile. This rate is prohibited, however, by order whenever its use would raise the rate now charged, and furuther when the commodity in reaching destination will pass over two or more lines, the initial road is allowed to charge one and one-half cents per mile for the first ten miles of the haul.

For the convenience of the court we make the following tabulation from the testimony:

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation, taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1850,253.21
Cost of operation 66.7 per cent,	$1,034,018.89
Taxes	162,928.23
	$1,196,947.12
Net earnings	$353,306.09

Total mileage of road in Florida, 1,263.74 miles.

$353,306.09 equals 3.49 per cent. on valuation of $8,000 per mile.

$353,306.09 equals 3.11 per cent. valuation of $9,000 per mile.

$353,306.09 equals 2.79 per cent. on valuation of $10,000 per mile.

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1,550,253.21
Cost of operation 56.7 per cent.	$878,993.57
Taxes	162,928.23
	$1,041,921.80
Net earnings	508,331.41

Total mileage in Florida, 1,263.74 miles.

$508,331.41 equals 4.47 per cent. on valuation of $8,000 per mile.

$508,331.41 equauls 4.47 per cent. on valuation of $9,000 per mile.

$508,331.41 equals 4.02 per cent. on valuation of $10,000 per mile.

Florida earnings and expenses for the year ending June 30th, 1904, as reported to the railroad commission.

EARNINGS:

Freight	$2,480,289.60
Passenger	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	30,329.20
Other sources	52,434.85
	$3,903,012.70

It will be observed that with the cost of operaton at 66.7 per cent., which includes 10 per cent. additional for the cost of intra-state trafic more than inter-state traffic, the earnings would be less than 3 per cent. If on the other hand, we take the operation at 56.7 per cent. the earnings would be only 4.2 per cent. on a valuation of $10,000 per mile. These figures are conservarive in the extreme, in view of the testimony as to value, and we submit that with interest ruling, as a statutory rgulation, at 8 per cent., no reduction should be made in the rate that in any way militates against earning this amount of money.

WHAT IS PROPERTY?

What is property and what amounts to a deprivation of it is discussed at length by Judge Hare in his work on American Constitutional Law, at page 357 of which work he says:

"The term property may be used to signify the "thing owned or possessed, or the right and privileges "which together make up the aggregate of use or enjoy- "ment implied in ownership. Property may therefore "be justly defined as 'the dominion of indefinite right of "user or disposition which one may exercise over par- "ticular things or subjects.' This is its appropriate "meaning, and that which it has in the Constitution; "although it is not infrequently used to indicate the thing "rather than the right, and much of the uncertainty and "confusion observable in the decisions have arisen from "overlooking this distinction.

"Such, manifestly, is the true interpretation of the "Federal Constitution, because the same amendment "which guarantees the right to compensation where "property is taken for public purposes provides that "no person shall be deprived of life, liberty or property "without due process of law."

On page 383 of the same work, he says:

"For as property is a right to the entire or partial "use, occupation, or enjoyment of some specific thing, it "may be taken either by abrogating the right, or so "dealing with the thing that the right cannot be bene- "ficially executed or enjoyed."

IS THE RATE REASONABLE AS AN ENTIRETY?

That the rate is not reasonable as an entirety we think is shown by the testimony of General Superintendent Denham. If the Plaintiff in Error were required to place 50 cars for phosphate, or a less number, for a haul of only 40 miles, the compensation to be paid to it under the rate made by the Commission would not pay for the cost of placing the cars, though if the haul were 400 miles it might afford compensation. That the rate is unreasonable for a short haul the commission in its report for 1904 (see pages 70, 71, 72 and 73 of the record) practically admits. A rate to be reasonable, we insist, must be reasonable as a whole. You cannot segregate and say that a rate is reasonable for 100 miles if it is not reasonable for 20 miles. Unless it is reasonable for the entire mileage it is not a reasonable rate, and the report of the Commission admits that for a haul of 10 or 20 miles the rate is unreasonable. This being true, the whole rate should be held unreasonable.

The short haul should be reasonably double the long haul.

Smyth vs. Ames, 169 U. S., text, 529.

The reasonableness of a rate must be determined solely upon the intrastate business.

Smyth vs. Ames, 169 U. S., 467.

Counsel for Defendant in Error contend that the method of arriving at the actual operating expenses for Florida is an erroneous method and misleading and does not give to Florida the proper portion of earnings, and charges the system in Florida with a greater burden for expense of operation than should be the case.

This contention is very well answered by Mr. R. S. McIver (page 59 of the record), as follows:

If the Florida lines were a separate company the receipts from freights would be very much less than they now are under the system of allotment under which the figurues submitted have been made. The earnings in Georgia are considerably heavier than in Florida, and that is the way with other lines. The total freight receipts from phosphate hauled in Florida for the year ending June 30, 1904, were about $430,000.

It will be seen, therefore, that instead of the method of apportioning the tons of freight handled and all expenses in regard thereto being to the disadvantage of Florida, it is to its advantage, and that, as a matter of fact, under the testimony just quoted, the expense of operation would be even greater than that contended for by Plaintiff in Error.

We submit that under a careful reading of the record in this case and the rpinciples of law applicable thereto, the contentions of Plaintiff in Error are well taken and should be sustained.

JOHN E. HARTRIDGE,
Attorney for Plaintiff in Error.

John E. Hartridge

No. 152.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1905.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. McKENNEY,
Clerk.

NO. [redacted]9

ATLANTIC COAST LINE R. R. CO.

PLAINTIFF IN ERROR.

vs.

THE STATE OF FLORIDA ETC.

DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

W. H. ELLIS, Attorney General
J. M. BARRS, Special Counsel.

THE FLORIDIAN

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1905.

The Atlantic Coast Line Railroad Company, Plaintiff in Error, vs. The State of Florida upon the relation of W. H. Ellis, As Attorney General of Said, State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne et al., Railroad Commissioners of said State. Defendant in Error.	No. 152. Error to the Supreme Court of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enforce rates on phosphate from points in the State of Florida to points within the said State over all the lines of railway of the plaintiff in error wholly or in part within the State of Florida.

The Railroad Commissioners, in prescribing the rates as set up in Exhibits A. and B. (pp. 11 to 13, inclusive, of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case will be found on pp. 35 to 37, inclusive, of the record, which is based on the evidence taken before the Supreme Court of Florida, on p. 47 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first assignment of error is based on the overruling of the demurrer of the plaintiff in error to the alternative writ of mandamus. The opinion of the Supreme Court of Florida and the statement of the cause will be found on pp. 15 to 25, inclusive, of the record.

It is not deemed necessary to argue this point. This is a question of State practice which is concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

SECOND.

This court is precluded from reviewing the judgment of the Supreme Court of Florida on the second assignment of error. See cases cited above.

THIRD.

The third, fourth, fifth, sixth and seventh assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, which is contained in the record on pp. 35 to 37, inclusive. The eighth is a blanket assignment which covers all the others. No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion and that finding is conclusive in this court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

See pp. 35-37 of the record.

According to the decisions by this court, the plaintiff in error has not shown sufficient facts to reverse the judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;

Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;

Reagan v. Farmers Loan & T. Co., 154 U. S. 362;

St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;

Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;

Smyth v. Ames, 169 U. S. 466;

San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact we could rely upon the opinion of the Supreme Court of Florida, pages 35, 37 of the records for sufficient comment upon the evidence submitted by the Atlantic Coast Line Railroad Company. We, however, would call the attention of the court to the fact that what evidence was submitted by that company was shown to be utterly worthless when on cross-examination the witnesses admitted that their books from which they testified do not show the actual receipts from intrastate freight business in Florida, but that the books from which they testified showed as receipts from Florida intra-state business only the result of multiplying the actual number of tons of such freight hauled one mile in Florida by the *average* ton-mile freight rate on the whole Atlantic Coast Line System.

See testimony of R. S. McIver, Auditor of Freight Receipts for the Atlantic Coast Line Railroad Company, record pages 56 and 57, in which he, on cross-examination, says:

"The amount of freight receipts allotted to Florida does not represent the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one mile on the entire A. C. L. system in Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, and the entire freight receipts of the entire system for the year, and thereby ascertaining the average rate per ton for hauling one mile all freight hauled on the system. We then take the actual number of tons of freight handled one mile in Florida and multiply that by the average rate received by the system and allot the amount so arrived at to the Florida lines as their earnings. This is the basis on which all of our statements are made."

Inasmuch as the average rate of freight per ton per mile in Florida is several times greater that the average rate on the entire system the injustice done to Florida is manifest, and this is also shown in the evidence by their witness on cross-examination when they admit (see testimony of W. B. Denham Record P. 53) that the business done by the Atlantic Coast Line in Florida for the year ending June 30th, 1903 was considerably better than the business done by the Plant System over the same lines the year before, and yet because of this system of book-keeping, showed the gross earnings of the Atlantic Coast Line for 1903 more than $818,000. less than reported by the Plant System for 1902.

It was also attempted to charge the operating expenses as a cost of hauling freight one year the purchase of engines, the cost of taking up light rails and replacing with heavy rails and other betterment or construcion charges.

The evidence also fails absolutely to show that the enforcement of the order of the Commission will reduce the revenues or add to the expenses of the company one single cent. Indeed it is affirmatively stated by witnesses for the Atlantic Coast Line that there are now no intra-state shipments to be affected, consequently there can be no damage arising from the putting into effect of the proposed rate.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.

FILED
MAR 1 1906
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY,
Plaintiff in Error,
v.
THE STATE OF FLORIDA, ETC.,
Defendant in Error.

No. ~~195~~ 10
and
No. ~~195~~. 11.

THE ATLANTIC COAST LI
RAILWAY COMPANY,
Plaintiff in Error,
v.
THE STATE OF FLORIDA, ETC.,
Defendant in Error.

No. ~~192~~. 9.

Supplemental Brief for Defendant.

WM. H. ELLIS, Attorney-General.
J. M. BARRS, Special Counsel.
Attorneys for Defendant.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	Nos. 155 and 156.
THE ATLANTIC COAST LINE RAILWAY COMPANY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	No. 152.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

Plaintiffs in error failed to have the records printed in time to permit defendant in error to possibly file briefs as required by the rules of this court before the cases were first reached on the docket, and failed so long thereafter to file

their briefs that attorneys for defendant in error came to the conclusion that they did not intend to file such briefs at all. We, therefore, under that impression, filed our first briefs.

This brief is not intended as taking the place of those heretofore filed, but as supplemental thereto, and as replies to Briefs of Plaintiffs in Error.

The briefs for plaintiff in error were filed for the Seaboard Air Line Railway, February 17, and for the Atlantic Coast Line Railroad Company, we understand, will be filed still later. Attorneys for defendant in error, therefore, present for the consideration of the Court in reply to the plaintiff the following :

The three above-entitled cases were tried in the Supreme Court of Florida at the same time upon identically the same issue, the issue in each case being presented as a return to an alternative writ, the return and joinder of issue thereon being in the three cases in identically the same language, the return being,

" that the passenger and freight tariff prescribed by the Railroad Commission of the State of Florida, to be observed by the defendant in the carriage of freight and passengers in the said State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers, and that the enforcement of such tariff and rates of said Florida Railroad Commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof."

The alternative writ and every subsequent pleading in numbers 152 and 156 hereinafter referred to as Phosphate Rate cases are identical, the names of the railroad companies only excepted. The alternative writ and earlier pleadings in 155 hereinafter referred to as the West Shore case are somewhat different from those in 152 and 156, but the only question before this Court is based on the amended return above quoted, upon which issue was joined. The three cases having been tried and decided together upon the same issue, it is understood among counsel that they will be submitted in this Court

together. This one brief will, therefore, be submitted by us in the three cases, noting herein briefly such differences as are presented by the three records.

Plaintiffs in error do not question the authority of the Railroad Commission under the Constitution and laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; or the right of the State to enforce the orders of the said Railroad Commission by mandamus, instituted originally in the Supreme Court of the State; or the regularity of the proceedings before the Railroad Commission preliminary to the making of its orders; or the *prima facie* reasonableness, justice and validity of the findings and orders of the Commission; or the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the *prima facie* validity of the orders of the Commission; and they are entirely manifest by reference to the Constitution and laws of Florida, and cannot be reviewed by this Court.

We will submit that attorneys for plaintiffs in error contend only that the Supreme Court of Florida erred in findings of fact, and that the findings of the Supreme Court of Florida, and facts as stated in its opinions, are conclusive in this Court. We submit, however, that the findings of fact in the Supreme Court of Florida, and the decisions in that Court, were not erroneous, even if reviewable as findings of fact, in this Court.

The opinions of the Supreme Court of Florida speak most convincingly for themselves on this point.

In the phosphate rate cases the Railroad Commission of Florida had fixed a rate of freight on phosphate, with certain limitations and provisions, at one cent per ton per mile, and these orders are sought to be enforced, and in the West Shore case the Railroad Commission was seeking to enforce a rule made by that Commission in pursuance of law (sustained as to its validity by the Supreme Court of the State of Florida) which is as follows:

"All railroads which are under the management or control by lease, ownership or otherwise of one and the same

company and all connecting roads, the majority of whose stock is owned or controlled, either directly or indirectly by one of the connecting lines, shall for the purpose of transportation in applying their schedules of freight rates be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road, unless otherwise specified. The fact that each of said roads has a separate Board of Directors shall not prevent the application of this rule. Whenever any railroad company owns and operates in connection with its road for the purpose of transporting its cars, freight or passengers in steamer or other water craft, such steamer or water craft shall be deemed a part of its said road."

The railway companies having pleaded that the enforcement of the orders of the Railroad Commission in these cases would practically confiscate their property, and issue being joined on that return, and the *prima facie* reasonableness, justice and validity of the orders being legally established and the burden of overcoming this *prima facie* character of the order being placed upon the railroad companies, trial of the three cases were entered upon.

Under the Florida laws the Railroad Commission have the right to fix and do fix all rates of transportation, limited only (at least so far as review by this Court is concerned) by the provision of the Federal Constitution against taking property without due process of law.

The findings and orders of the Commission being *prima facie* reasonable, just and valid, they will be enforced unless it is shown affirmatively by the Railway Companies that it is impossible for them to make a reasonable profit on their Florida Intra-State business. These companies have no legal right to charge rates to some places, or to some shippers or on some articles less than allowed by the Commission's Rates and make up losses so sustained by charging rates to other places, or to other shippers or on other articles in excess of the rates fixed by the Commission.

Limited only by the provisions of the Federal Constitution against taking property without due process of law, the Commission are vested with the discretion as to the distribution of the burthen of transportation charges upon the various subjects of transportation. If the entire schedule of rates, taken as a whole, will permit the Railway Company

to derive a reasonable profit from its Florida Intra-State Business upon that part of its Florida lines engaged in the business of Florida Intra-State transportation, the company must comply with the orders of the Commission.

The orders of the Commission being *prima facie* reasonable, just and valid, the Company attacking the order must show what part of its property is used for the purposes of carrying on its Florida Intra-State business, the value thereof and the cost of operation and maintenance thereof, and what has been or what will be (and this must not be speculative), the possible revenue from that business under the schedules of rates fixed by the State Commision. And that revenue must be the *actual* revenue, and not an *estimated* revenue, estimated as is attempted to be done in these cases by taking the *actual* number of tons of Florida Intra-State Freight hauled one mile, and multiplying it by the average rate received from an entire system covering several states. The average rate of freight, for instance, on all Florida Intra-State business, which includes great quantities of such extremely high grade freights as fruits, early vegetables, &c., is between three and one-half and four cents per mile, while the average rates on the whole systems, including iron ore, coal, &c., is for through and local combined, a little less than one-third the average Florida Intra-State Rate.

Evidence.

The Atlantic Coast Line presented and took the testimony of several witnesses and introduced certain reports made to and by the Florida Railroad Commission. The Seaboard Air Line offered in evidence only certain reports made to and by the Florida Railroad Commission, but swore no witnesses. The State of Florida in the Atlantic Coast Line Railroad case offered and filed in evidence the report made for the year ending June 30, 1902, of certain railroad companies which at the time of the making of this order constituted the Atlantic Coast Line Railroad Company in Florida, these reports having been called to the attention of one of the witnesses for the railroad company and he having been cross-examined with reference to them.

The witness for plaintiffs in error, W. B. Denham, Superintendent of the Second Division of the Atlantic Coast Line Railroad Company, testifies that he had been the General Superintendent of the Plant System lines, which, by consolidation, became the A. C. L. in Florida, and that under the Plant System management the accounts of the Florida lines were kept separate and distinct from the other lines of the Plant System, so that there could be ascertained the earnings, expenses, etc., of the Florida lines, but (page 48 of the record in case No. 152)

"since the consolidation the percentage of cost has not been kept separately but has been consolidated and the percentage taken on the entire Atlantic Coast Line Railway System."

In the next sentence in his testimony he states that

"the percentage of cost for the operation of the Florida properties of the Company for the fiscal year ending with June, 1904, was greater than ever before"

which shows the effect of the change in the method of bookkeeping and the consolidatiing of the cost of operation in Florida, where construction and maintenance are extremely cheap, and there are, practically speaking, no grades and the tracks are laid, practically speaking, on a level with the ground, and many of the heaviest items of expense of construction, maintenance and operation are wholly unknown, and where the tonnage per mile and number of trains run are relatively small and the passenger fares and the rates of freight on the great bulk of freight handled are very high, ~~with the corresponding cost of the entire A. C. L.~~

The witness then proceeds to show the great expensiveness of handling phosphate for foreign shipments, which are not covered and cannot be affected by the orders of the Florida Railroad Commission, for the reason that phosphate rock shipped from mines within the State to ports either within or without the State, there delivered to steamships or sailing vessels for transportation to Europe, as the great bulk of phosphate shipments are shipped, are clearly not within the jurisdiction of the State Railroad Commission, which claims no jurisdiction over such shipments.

The testimony of this witness also shows that the railroad

companies, in the matter of foreign shipments of phosphate rock, give facilities for such shipments which are in themselves very expensive and charge no demurrage upon the cars, as they have a right to charge, and yet such shipments are made, as appears from the evidence of witnesses, at rates not exceeding one cent per ton per mile, whereas, it is manifest that the shipment of phosphate from the mines in the interior of the State to phosphate reduction plants where acid phosphate is extracted from the rock, can be made with vastly less expense than the shipments that are sent abroad, because of the extra expenses shown by this witness to be attendant upon the rushing of phosphate to the ports for delivery to a particular steamer, the day of arrival of which cannot be known ahead, and which must be loaded quickly to avoid steamship demurrage charges.

We respectfully call the attention of the Court to the testimony of this witness on page 48 *et seq.* of the record in case No. 152. This witness near the top of page 50 in the record, says:

"My testimony in regard to additional cost of transportation because of having to hold cars for ships was with reference to shipments from Savannah and Port Tampa going by ship."

We submit also that if the railroad company is forced to put into effect a rate on phosphate for delivery of phosphate from the mines in the interior of the State to the phosphate works at seaports of one cent per ton per mile, which is considerably more than the rate charged on foreign shipments and considerably more than the average rate credited to Florida by the S. A. L. Report, and stated by attorneys for the S. A. L. in their brief on page 6 to be .815 of one cent, the railroad companies can by enforcing demurrage charges and because of the difference in the nature of the shipments, handle the phosphate rock to the phosphate reduction works, at a large saving in the cost of transportation, and unless there is some unknown source of revenue to the railroad companies arising from the foreign shipments through favored ports and over favored lines the enforcement of the rate proposed by the Railroad Commission will, upon such shipments as are made locally, result in a much larger income and a much less expense.

The witness also testified, near the bottom of page 50, that the railroad company collects demurrage on all other freight but never charged demurrage for phosphate, and the witness is all the time testifying with reference to foreign shipments of phosphate. The witness also, on page 51, testifies that the Atlantic Coast Line Railway Company, which operates lines of railway running directly from phosphate fields to the City of Jacksonville, have in effect no rates on phosphate for transportation to Jacksonville, because they have no port to put it in.

On page 52 the testimony of Superintendent Denham contains the following:

"Q. All of your testimony with reference to transporting phosphate is based on your experience with shipments either over your line, out of the State, into Georgia or to Port Tampa, to be delivered to ships to go to foreign countries, is it not?

A. Yes, because we do not handle any other phosphate except the little that that phosphate plant at Jacksonville used to get. It got a little phosphate occasionally, but outside of that there is nothing. That was the only plant in Florida that used any phosphate. That did not take care of twenty cars per year, so practically none was handled. They have been out of business for two years.

Q. Practically no phosphate being handled, according to your opinion, except shipments either foreign or inter-State?

A. Yes."

Perhaps to enable this Court to understand the conditions as the Supreme Court of Florida, and all people in Florida know them, it is well to state that the phosphate mined in the State is all mined in the interior of the State in certain well prescribed sections. Phosphate rock as mined is worthless, except when put through a process which extracts the acid phosphate from the rock, which process is expensive and requires a large plant. Practically speaking, all of the phosphate mined in Florida is shipped out of the State, by far the greater proportion going foreign, the smaller proportion going to various phosphate reduction plants in other States. Efforts have been made and plants have been recently built at ports in the State for the utilizing of the phosphate rock. This is to some extent shown by the testimony of Superintendent Denham.

The testimony shows that the Railway Companies count in their reports all phosphate shipments, absolutely all, as foreign

or inter-State, giving the State no credit for any of the shipments.

The Supreme Court of Florida knows as all other people in Florida know, that there are plants at Jacksonville, Florida, which would, were they given the same rate, or anywheres nearly the same rate, that foreign shipments are given, use considerable quantities of phosphate rock, and yet Mr. Denham testifies that they have no rate to Jacksonville and make no shipments there.

We submit that upon their own testimony that they are not now receiving any revenue whatever from shipments of phosphate from points in Florida to points in Florida, which are amenable to the rules of the Railroad Commission, and that the rates for actual charge on foreign shipments do not exceed the rate fixed by the Commission, one cent per ton per mile, and that the cost of transportation on foreign shipments is very greatly increased because of the necessity for quickly furnishing transportation to ships to prevent their going on demurrage, and that they therefore show beyond question that the enforcement of the Railroad Commission's order cannot possibly reduce either the gross or net incomes, but must necessarily increase both the gross and net revenues of the railroad company, unless the railroad companies are getting some unknown and illegal revenues from foreign shipments.

While considering the testimony of Mr. Denham, we suggest that he shows the absolute unreliableness of the reports made by the railroads to the Railroad Commission, not only by his testimony heretofore noted, to the effect that they do not now keep the accounts of the Florida Division separate from the other Divisions of the road, but also by his statement at the bottom of page 52 and top of page 53, and by the showing of the railroad reports on the top of page 53, to which his attention was called, and which were introduced in evidence.

He had testified, as did Mr. McIver, that the business done by the Coast Line in Florida was considerably better than the business done by the Plant System over the same lines the year before, and (top of page 53),

"witness was shown reports to the Florida Railroad Commission made by the Plant System of Railroads to June 30, 1902,

and by the Atlantic Coast Line System to June 30, 1903. His attention was called to the fact that the Plant System report showed $4,150,481.26 gross earnings from operation of lines in Florida for year ending June 30, 1902, and that the Atlantic Coast Line report showed total gross earnings from operation of same lines in Florida for year ending June 30, 1903, only $3,331,967.16".

"Q. You have testified that the business done by the Atlantic Coast Line for the year ending June 30, 1903, over its Florida Lines was considerably better than the business done by the Plant System over the same lines the year before. Will you explain how it is that the Atlantic Coast Line reports more than $818,000 less gross earnings when they did a considerably better business?

A. I can explain that. You have not Georgia and North Carolina which means a great deal more than that.

Q. This is for Florida?

A. I told you that up to July, 1902, our earnings in Florida and expenses were kept separate and they were operated as one railroad. If you take the expenses of Georgia and North Carolina and put Florida with it the expenses decrease on that ratio.

Q. Is not that a report of the lines in Florida?

A. Report arrived at in that way.

Q. What is the percentage reported for 1903 in Florida?

A. That report is correct if it comes from our people. It is arrived at—the earnings by taking the mileage of Florida as earning the same money as Georgia or North Carolina, which is not the case by any means."

As further showing the unreliability of their reports, and of all figures presented by them, Superintendent Denham, at the bottom of page 53, shows that according to their style of bookkeeping the entire cost of relaying with heavier rails the entire line in Florida and the entire cost of new rolling stock purchased, perhaps for years to come, may be charged up in one year's operating account.

"Q. From your experience would you not say that the percentage of expense to earnings in 1904 will show less than for 1903?

A. I will not say certain because sometimes our expenses fluctuate. It depends on how many cars and engines you have to buy. Railroads don't last always, you know, and you have to buy cars and railroad iron to put back on it and when you buy a foot of railroad iron it costs one dollar for every foot you put down. Our railroads are twenty or twenty-five years old and we have to relay them if we are to operate them. Cars wear out and engines wear out".

We suggest that if the evidence of this witness, on page 54, be true, which we do not believe would be the case on a proper system of accounting, because of the extremely high rates charged on those lines, the Coast Line cannot acquire the right, by the purchase of unprofitable lines like the St. Johns and Lake Eustis and other roads are alleged to be, to refuse to put into effect any rates whatever for the transportation of phosphate from the interior of Florida to phosphate reduction plants at Jacksonville and other ports.

R. S. McKeever, witness for plaintiff in error, testified (page 56, record number 152), that he was auditor of freight receipts under the Plant System, and is now auditor of freight receipts for the Atlantic Coast Line, and says :

" the freight earnings of the Atlantic Coast Line Railway Company for Florida's intra-State business for the year ending June 30, 1904, was $871,926.41."

At the bottom of page 56 he says, explaining the wonderful system of bookkeeping under which his reports are made out :

" receipts are allotted to Florida lines on the basis of tons per mile of the entire Atlantic Coast Line System. The amount of freight receipts allotted to Florida does not report the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one mile on the entire Atlantic Coast Line System in Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and the entire freight receipts for the entire System for the year, and thereby ascertaining the average rate per ton for hauling one mile all freight hauled on the System. We then take the actual number of tons of freight handled one mile in Florida, and multiply that by the average rate received by the System and allot the amount so arrived at to the Florida Lines as their earnings. This is the basis on which all of our statements are made. We have some income from mail service but I do not know what it is. No other sources of income are taken into consideration. We treat all phosphate shipments through Port Tampa as intra-State and they are not included in these figures nor are any phosphate shipments included."

On page 859 of the record (No. 152) we find Mr. McKeever, the auditor of freight receipts and the official who makes out all reports to the Florida Railroad Commission, again shows the utter unreliability for the purpose of ascertaining actual receipts and expenditures in Florida of the reports made by

the railroad companies to the Railroad Commission, and also of all the testimony submitted, by explaining the basis on which their figures are made as follows:

"The raising and lowering of rates on phosphate in Florida to Port Tampa affects the receipts of the Virginia Lines just as much as the Florida Lines, according to our method of division, and the raising and lowering of rates in North Carolina affects just as much the per ton per mile the credit given to Florida as to North Carolina. It would be the same if we hauled oranges at so much per ton per mile."

That is to say, that, according to the system of bookkeeping maintained by the railway companies from which the reports to the Railroad Commission are made, and upon which the testimony is all based, the fact that the average rate of freight in Florida is several times the average rate of freight in Virginia and Alabama and very much greater than the average rate of freight in any other State in the Union is utterly ignored and the Florida lines are given credit at no higher rate per ton per mile than other railroads, and Florida is given the same credit for hauling one ton of oranges one mile at four or five cents per ton as is given to Alabama for hauling a ton of iron ore at one-half cent per ton. That is to say, that in Florida where the tonnage is relatively small, and the rate averages a little more than three and one-half cents per ton per mile, including the high class articles such as fruits, vegetables and early truck gardening products, the receipts are arrived at by taking the actual tonnage, which is small and multiplying it by the average rate on the entire System which average rate is fixed to a very great degree by a very cheap rate of hauling iron ore and coal in Alabama and Virginia at less than one-half cent per ton per mile in many instances.

In this way the *actual* rate of over three and one-half cents per ton per mile on Florida Intra-State freight is reduced in the S. A. L. Report, cited by their attorneys on page 6, to .815 of one cent per ton. And yet this Court is asked to reverse the finding of fact of the Supreme Court of Florida upon only such evidence. The reports made to the Railroad Commission presented by the State of Florida in the Court below were presented because they had been shown to witnesses who had been interrogated about them and to show the fact that notwithstanding the witnesses of the railway company had testified that the

business done by the Atlantic Coast Line over the Florida lines was considerably greater than the business done by the Plant System over the same lines the preceding year, these reports made out by the witness McIver, himself, show that under the system of bookkeeping maintained by the Atlantic Coast Line the estimated earnings were made to appear very greatly reduced, below the actual earnings shown by the Plant System.

The testimony of the witnesses presented by the Atlantic Coast Line Railroad Company having shown so clearly the fact that the reports made to the Railroad Commission were worthless as evidence of actual receipts and expenditures in Florida, and that their method of bookkeeping was such that the railroad officers could not testify as to the actual receipts and expenditures in Florida or in fact throw any light upon the real conditions; the Seaboard Air Line called no witnesses whatever, contenting themselves with offering in evidence the report of the said Seaboard Air Line Railway to the Railroad Commission of the State of Florida for the year ending June 20, 1904, which report it was the duty of the railroad company to file, and the filing in evidence of which was permitted only to show that the railway company had complied with that obligation and that the Railroad Commission had that report before it. It certainly cannot be taken without swearing any witnesses as proving the truth of everything found in those reports or as showing the system used in arriving at the statements therein contained. In fact reports being before the Railroad Commission at the time of their action and the findings of the Commission being *prima facie* correct, reasonable, just and legal, we do not think that such a report can be made the basis of a reversal of the decision of the Supreme Court of Florida in this case any more than can the fact, even if proven as set up in the report to the Florida Railroad Commission showing previous reductions in freight and passenger rates, be taken as proving that this action was unreasonable.

We submit that the suggestion that previous reductions

had been made and not fought by the railroads and the fact that during the eight years and more of existence of the Florida Railroad Commission, this is the first time that its findings have been brought before this Court, is rather an indication of the fact that the Florida Railroad Commission is a very conservative body. We are forced to take the other intimations to the effect that the Seaboard Air Line Railway considers the Florida Railroad Commission as a kind of Populistic body, regardless of the interests of railroad owners, about as seriously as we do the suggestion in the brief that the object of the Commission in making the phosphate rate was the cheapening of phosphate to Florida farmers.

In conclusion we submit that there is no evidence that the enforcement of the order will in any way reduce the revenues of the railroad companies in any of the cases, as the simple refusal of the railroad company to obey an order of the Railroad Commission can hardly be taken as such evidence and we have the positive testimony of witnesses presented by the Atlantic Coast Line Railway Company that there are now no shipments of phosphate which are covered by the Railroad Commissions orders. And this proposition was urged time and again by counsel for plaintiffs in error in the Court below as reasons why the order should not be enforced, but the Court held, and properly, that the Commission had a right to require putting into effect of a rate if no rate existed and if necessary to even anticipate business or to make possible business, as, of course, the construction of phosphate reduction plants would necessarily be greatly discouraged by the fact that the railroad companies before had refused to make rates. There is not only no evidence that there will be any shipments of phosphate, under the order of the Railroad Commission over any short distances as for instance five or ten miles or twenty miles, or any other small distance, and in fact the very conditions in Florida would prevent such shipments because of the fact that phosphate is mined in the interior and can be used only by phosphate reduction plants, which must necessarily be located at ports where certain other materials can be gotten together to utilize phosphate rock.

In the West Shore case we submit that the rule is an entirely reasonable one and regardless of profits or expenses of the railways it is entirely reasonable and just that a rule shall be enforced which prohibits a railway company from dividing itself up into a whole lot of little lines and from charging a half dozen local rates in a short distance.

Respectfully submitted,

J. M. BARRS,
Attorney for Defendant in Error.

FILE COPY.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
MAR 9 1906
JAMES H. McKENNEY
Clerk.

SEABOARD AIR LINE RAILWAY,
Plaintiff in Error,

v.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

Nos. [redacted] 10 and [redacted] 11.

THE ATLANTIC COAST LINE RAILWAY COMPANY,
Plaintiff in Error,

v.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

No. [redacted] 9.

BRIEF FOR DEFENDANT

Filed by Leave of Court.

J. M. BARRS, Special Counsel.

Attorney for Defendant.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	Nos. 155 and 156.
THE ATLANTIC COAST LINE RAILWAY COMPANY, Plaintiff-in-Error, vs. THE STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	No. 152.

BRIEF FOR DEFENDANT IN ERROR.

Filed by Leave of Court.

The defendant in error, under the authority to file an additional brief, in reply to the proposition advanced by counsel for the Seaboard Air Line in the concluding argument, that the rate of one cent per ton per mile on phosphate rock, being made in an order which also pro-

vided that existing rates are not raised where the rate is now less than one cent per ton per mile, is, because of that fact, unreasonable and invalid, we suggest that this fact does not argue even any unreasonableness of the order, for the reason that the "pebble phosphate", which is worth even less than "hard-rock phosphate," must, in some instances, be carried a considerable distance, and that a rate of one cent per ton per mile would be on that material absolutely prohibitory to places where it can be utilized, and the railroad companies, recognizing this fact, have themselves made lower rates on "pebble phosphate" on longer hauls.

As to the suggestion that it allows the charging of a less rate to one person than to another person, we reply that the rules of the Railroad Commission, and the Acts of the Legislature prohibit discrimination of that kind.

We also suggest that the Florida Railroad Commission is constantly in session from day to day, and that if any hardship shall be discovered in the workings of the rule, the Commission has power, and will be presumed to stand ready to exercise the power, of modifying its rules and orders, with the consent of the railway company, without notice to any one else.

To make clear the contention in our oral argument that receipts from phosphate freights are not to be reduced by the order, we submit that on page 73 of the record, in case No. 156, Item No. 17, "average receipts per ton per mile" on "traffic and mileage statistics State of Florida", is given as: .00815. which is less than the phosphate rate allowed,—and the sworn returns to the alternative writ of mandamus found on pages 22 and 23 of the Record in No. 156 and on pages 26 and 27 of

the Record in No. 152, show that present rates, if any, do not exceed the rates allowed in the order. The testimony of Denham and McIver in No. 156 shows that all phosphate freight is foreign or inter-State.

We also submit that there is, at least, no evidence to show that the Seaboard Air Line does not use the same method of making out accounts that is used by the Atlantic Coast Line, shown in the testimony of the officers of the Atlantic Coast Line in the record of case No. 152. At any rate, there is an absolute undisputed lack of testimony as to the local or intra-State rate on any commodity in case No. 156, or in No. 152. The rate as shown by the rate sheet on page 8 of the record in No. 155 is a very high one, but there are no phosphate shipments over the West Shore branch of the S. A. L.

There is also an absolute undisputed lack of evidence of any kind as to the amount of local business done, or the profitableness or unprofitableness of the local business done as distinguished from the inter-State or foreign shipments.

Again, the only evidence as to the valuation of the railroad property is on the basis of amount of stock acquired to give control without any evidence as to the price paid for or the real value of the stock.

Under the head of costs of road equipment and terminal improvements on page 56 of the record, in case No. 156, we find as one of the items of cost of the Railroad and equipment the following "Item 26", "Treasury stock bonus to subscribers of $5,000,000. bonds $12,500,000." "cost per mile $4,893.80".

As we understand this statement, patrons of the Seaboard Air Line are to be expected to pay a revenue on a valuation of $4,893.80 per mile because the Seaboard Air Line Management saw fit to give a bonus of $12,500,000. to purchasers of only $5,000,000. of bonds. And again, we find in the next item $12,086.90 costs per mile, upon whch they are expected to pay a revenue, is covered in the item "acquired by control of stock", without giving us any information whatever as to the cost of acquiring control of stock, or the value of the stock, or any other information on the subject. And on page 57 we find another item of $894.95 per mile accounted for by "acquired control of stock".

We do not mean by this to say that the Seaboard Air Line Railway did not cost anything, but we do submit that there is no evidence as to what it did cost presented in any such way as would warrant this court in reversing the Supreme Court of Florida on a question of fact and overcoming the prima facie reasonableness of the order of the Railroad Commission.

For the further purpose of showing the elements going to make up the assets of the Seabord Air Line, according to this report, which is the only basis of the appeal to this court, we ask the attention of the court to pages 62 and 63 of the record n case No. 156. On page 62 we find that the Seaboard Air Line Railway, in addition to its *railway and tangible property*, owns railway stocks of the total par value of $46,028,189.53, which produce an "income or dividend received" of only $17,800.00. and which the report estimates as the true valuation, $65,269,144.35. This company owns "other stocks" of total valuation of $868,000.00, which produced "income or dividend received $12,600.00" and

valued at $1,312,038.50. And page 63 shows "Bonds owned-Railway Bonds", "Total par value $5,828,810.-00", on which they received "income or interest received $9,875.00", which is valued in the report at $5,278,534.-23"; and the company also owns "other bonds" amounting to $50,000.00, and they own "one-third interest in $14,000.00 Florida Publishing Company six per cent bonds, on which they receive an income or interest of $280.00, which they value at $800.00. We submit this page is interesting, in this, that, with the grand total par value of bonds of $5,878,810.00 and the total income or interest received on account of those bonds aggregating only $10,155.00, the company's valuation of the same is $5,329,334.23, and the fact being that, according to their showing, the only two bond items on which they received any income or interest whatever are two Florida properties, one of them the Florida West Shore Railway, total par value $395,000.00, paying $9,875.00, being valued considerably below par, and the Florida Publishing Company bonds, which pays the remainder of the entire income received, is valued far below par, while most of the other bonds, which are paying no income or interest, are valued at par, and the "Oxford and Coast Line" first mortgage bonds "$25,-000.00", which has paid no income or interest, is valued at $54,359.36.

We will not take up the Court's time with more details, as scarcely a page of the report can be examined critically without showing that the report is not to be taken seriously in any way.

As absolutely settling case No. 155, the Florida West Shore Branch case, enforcing the Commission's Rule against more than one local rate on a single line, we submis that this branch is not included in any way whatever in the S. A. L. Report offered in evidence, and there is absolutely no evidence of any existing ratc, or cost or value of that branch or the business done or any reference whatever to the Florida Wset Shore branch.

The Record in that case pages 57, 58, and 59, give all the roads operated and the Florida West Shore is not found there or elsewhere, that w ecan find.

Respectfully submitted,

J. M. BARRS,

Attorney for Defendant in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, *Plaintiff-in-Error*, *v.* STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.*	No. 155 and No. 156.

BRIEF FOR PLAINTIFF-IN-ERROR.

These cases are here on writ of error from mandamus issued by the Supreme Court of Florida in the exercise of original jurisdiction, and the parts of this brief not applicable to both cases will be distinguished as they are reached.

Appellant's railway system, which extends into six States and embraces 760 miles in Florida, yields income enough to pay the annual interest on its bonded debt, but as yet it pays no dividends to stockholders. The Florida portion of the road yields an income which is less by some $430,000 than its aliquot proportion of the annual interest on bonds for which it is bound, and yet the Florida Railroad Commission has made three several orders each reducing largely the intrastate freight rates on that road. One of these orders made December 22, 1903,

to go into effect July 1, 1904, reduced rates, as the report of the Commission told the people of Florida,

> "on every article of clothing, every article of household furniture, and everything we eat."

This was of course a general reduction and as stated by the Commission was a

> "saving * * * to the people of Florida."

From this we did not appeal.

In November, 1903, an order had been made reducing by 10 per cent certain freights going over two or more roads. From this we did not appeal.

Another order issued on June 25, 1903, to go into effect July 1, 1903, made reductions per 100 pounds, per ton, and per carload, distances graded from 10 to 400 miles, on what seems to be every possible class of freight shipped from or to points on the Florida West Shore Road, operated by appellant, and from this we appealed. This case is number 155.

Still another reduction was by order issued December 17, 1903, to go into effect January 15, 1904, requiring appellant to carry all the 250,000 tons of phosphate, intrastate, it was then carrying (and not carried as some of it was for less) at the uniform rate of one cent per ton per mile. From this order also we appealed and that case is number 156.

If this court sustains the court below then, by section 13 of the Railroad Commission law of Florida, for every failure of the appellant to comply with any requirement of either of the two orders appealed from the "injured person" may bring suit and recover damages, court costs and lawyers' fees. In other words, we are at the mercy of any "injured person" who, say, under the phosphate or-

der, has demanded of us to load and carry a ton of phosphate one mile and unload it for one cent, or load and carry it for five miles and then unload it, all for five cents.

The principal federal question in case 156 arises on the fourth and fifth assignments of error, which are in substance as follows:

Fourth. That the Supreme Court of Florida erred in adjudging that the rate on phosphate prescribed by the order of the Florida Railroad Commission was not unreasonable.

Fifth. And in deciding that the said rate prescribed by order of the Railroad Commissioners of Florida on December 17, 1903, on phosphates was not unreasonable, when taken in connection with the reductions of rates prescribed by said Railroad Commission on December 22, 1903, reducing merchandise rates on all articles of clothing, on bedsteads and bureaus, corn mills, cane mills, agricultural implements, lumber, bacon, corn, oats, rye, household goods, and live stock, as shown on pages 82 and 83 Rec.

This case involves directly only the order on phosphates, which was made December 17, 1903, and was to go into effect on and after January 15, 1904. The other order, to wit, that on merchandise, issued as above quoted on December 22, 1903, was to go into effect on July 1, 1904, and it is in effect now, the railroad not having resisted it. The two orders were parts of the same system, and both had been made applicable to the business of the plaintiff-in-error when the proceeding in this case was begun, March 7, 1904. The order of December 22, relating to general merchandise, was put in evidence without objection, and this was entirely proper inasmuch as the mandamus against the plaintiff-in-error is in the nature of a continuous and permanent order affecting the interests of the Seaboard Air Line Railway, not only from the

time when the petition for it was filed, to wit, on March 7, 1904, but also after July 1, 1904, when the order of December 22, 1903, was to go into effect.

Unfair Discrimination.

The evidence in the case shows that the Seaboard Air Line Railway Company is not paying any dividends to its stockholders and that its business in Florida is conducted at rates so low that any material reduction would be unreasonable, but before discussing the testimony we insist that—

(1) *The order of the Florida Commission in relation to phosphates is discriminatory, exceptional and partial as to the particular subject-matter. On its face it is an irregular, unjust and intolerable method of rate fixing.*

That order is as follows, see page 6, record of case 156:

> "It is, therefore, ordered by the Railroad Commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.
>
> "Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the Railroad Commissioners as their rate between such points."

This order makes the rate the same for one mile as for one hundred miles, and it is material because it applies to 16.43 per cent of all the intrastate freight business of the appellant company in Florida.

All railroad literature with which we are familiar, whether originating in discussions before legislative

bodies, railroad commissions, or courts, distinguishes between long and short hauls, since it is matter of common knowledge that no railroad carrier can transport freight at the same rate per ton per mile for long and short distances. Grading rates according to mileage may not, it is well recognized, secure perfectly fair compensation, but as the best and only practicable method of approximating justice we believe it may be called an unvarying custom.

It has been the custom of the Railroad Commission of Florida in other cases to follow this rule of grading rates with some reference to mileage as is shown by the record in both these cases. As an illustration, freights are graded on page 23 of record 155, and the lowest rate on a ton is "10 miles and under, 75 cents." The Commission, however, has selected phosphates to signalize a new departure from this just principle.

A railroad company may sometimes, for purposes of its own, do things which a commission can not be justified in ordering.

Louisville & Nashville R. Co. v. *Behlmer*, 175 U. S. 669–70.

Just such an order as this, however, we can not conceive that any railway company has ever prescribed for itself.

Phosphate mining is an important industry in Florida, and it appears from the reports (Rec. p. 75) that 16.43 per cent of the intrastate (Florida) freight carried by the appellant company is phosphate. Left entirely to conjecture, we guess that it was the desire on the part of the Commission to encourage the shippers of phosphate and the using of phosphate also by farmers that induced the Commission to select this article as the one commodity on which they would fix freight at one cent per ton per mile for short distances.

That it was the purpose of the Commission, while for-

mulating the order in general terms, to make it applicable only to hauls however short and to short hauls alone, thus making rates on phosphates discriminatory, partial and exceptional, conclusively appears from the following facts in evidence. On page 61A of the Record, item 17, under the head of freight traffic, the average rate per ton per mile (in Florida) is .815 of one cent; on the same page it appears, item 16, that the average amount received for each ton of freight hauled in Florida is $1.01.336; also in item 14, same page, that the average distance haul of one ton in Florida is 124.33 miles, from which we have this fact, which calculation from these figures verifies—that when the Seaboard Air Line Company hauls a ton of freight in Florida 124 miles, its average distance, its average charge is little over .81 of one cent per ton per mile. These rates, long and short hauls both considered, would seem to be quite reasonable. If it be urged that while this average includes phosphates, there is no proof that the charges on phosphates were not, when reduced, higher than on other freights, we answer by quoting the proviso in the order (p. 6, Rec.), as follows:

> "Provided, however, that where the rate of one cent per ton per mile will raise the rate now in operation, that the said rate per ton per mile shall not be effective but the rate as now charged by the railroad companies is hereby adopted by the Railroad Commissioners as their rate between such points."

This shows very clearly that the appellant company's rates on phosphates were, when altered, for long distances less than one cent per ton per mile, and more for shorter distances. If the rates between any points or for any particular distances were too high, the Board should have addressed itself to the task of reducing such rates, grading them according to distances; this because, as the

court judicially knows, short hauls and deliveries cost more than long hauls. In *Chicago, M. & St. P. R. Co.* v. *Tompkins*, 176 U. S. 168, Mr. Justice Brewer, delivering the opinion of the court, says:

> "It is obvious on a little reflection that the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy. Take a single line of 100 miles with ten stations. One train starts from one terminus with through freight and goes to the other without stop. A second train starts with freight for each intermediate station. The mileage is the same. The amount of freight hauled per mile may be the same, but the time taken by the one is greater than that taken by the other. Additional fuel is consumed at each station where there is a stop. The wear and tear of the locomotive and cars from the increased stops and in shifting cars from main to side tracks is greater; there are the wages of the employees at the intermediate stations, the cost of insurance, and these elements are so varying and uncertain that it would seem quite out of reach to make any accurate comparison of the relative cost. And if this is true when there are two separate trains, it is more so when the same train carries both local and through freight."

The authorities quoted in the brief of appellee are numerous, and indeed the line is unbroken to show that the decisions of the Supreme Court of a State construing and applying State statutes are not reviewable by the Federal Supreme Court; but they all have this limitation—they do not apply where a federal question is involved. In this case, for example, suppose the Supreme Court of Florida to have entirely disregarded, as it certainly did, the following provision of the Florida law contained in section 8, chapter 1700, number 39, of what is called the Railroad Commission law of 1899:

> "Said Commissioners in changing, revising, fixing, allowing or adopting any schedule of rates for freights or cars shall not discriminate unreasonably or unjustly in favor of any one class of freight to the detriment of other classes of freight."

Such disregard of its own laws by the State court is not reviewable here, except in so far as this statute has laid down a rule of conduct for the guidance of the Florida Railroad Commission which accords with the rules of fairness and justness which the Constitution of the United States requires to be observed by all railroad commissions.

Again, the same section of the Florida Railroad Commission law prescribes that

> "All rules and regulations made and prescribed by said Commissioners for the transportation of persons and property on the railroads subject to the provisions of this act or to prevent unjust discrimination or other abuses by them shall be deemed and held to be *prima facie reasonable and just*."

Now suppose the Commission to have made a freight rate which, on its face, is *prima facie* unreasonable and unjust, certainly the Supreme Court of Florida could not take away from this court the right to pass upon this question by declaring that said rates were just and reasonable. If the Florida court had any such power as this all questioning of the conduct of a State commission would end with the State courts, and there would be no such thing as federal jurisdiction over cases of this class. Take the case at bar and apply the principles we have been discussing.

Suppose the Florida State Commission to have conceived the idea that all phosphates mined in Florida ought to be utilized in fertilizing the lands of that State and that in furtherance of this idea the Commission had declared that phosphate rates for all distances in Florida should

be one-quarter of one cent per ton per mile. This would be a more startling application of the idea the Commission has acted on, but it would not differ in principle from the rule of one cent per ton per mile. The only difference would be that applying one quarter of one cent per ton per mile to all phosphate rates would be a discrimination as to phosphates for all distances, whereas one cent per ton per mile is a discrimination as to phosphates for all hauls, for which the company had previously charged more than one cent per ton per mile.

Again, suppose the Florida Commission, disregarding the instructions contained in section 6,

> "to make reasonable and just rates of freight and passenger tariffs"

instead of grading rates according to distances and thus having regard to the expenses incurred by railroads in transportation had, after looking at the average rates per ton per mile of freights in Florida, fixed .81 of a cent as the charge to be made for all freights, all distances, in the State of Florida. This would be unjust and unfair because, as has often been decided, freight rates must bear some approximately just proportion to the expenses incurred by the railroads. Such a rule, .81 of one cent for all distances, under conceivable circumstances, might work to the advantage of a carrier, and yet the court would not for a moment stop in such a case to work out the proposition as to whether the carrier would make or lose by it, but would unhesitatingly, as we think, declare the rating void, and this not because the result of such fixing of rates would be a loss to the carrier, *but for the reason that such a haphazard rule proceeded upon no fair or equitable principle that could be sustained in a court of justice.* If this would be the decision of the court in case the Florida Commission had fixed all rates for all distances

at the same figures, *a fortiori*, such must be the decision where a commission in violation of the rule laid down for its governance in the act creating it and forgetful of all considerations of expense and inconvenience to a carrier, has selected one commodity for a discriminatory straight freight rate; and here we call the attention of the court to the fact that the argument against this particular rate in no manner depends upon the extent of the reduction which has been made by the Florida Board on phosphate rates. That the order does make a reduction is apparent on its face; that was its avowed and only purpose. The extent of that reduction is not the question. The objection to the order is that it is unfair, exceptional and discriminatory.

We have found no case in which such a sweeping straight rate as this has been sustained. Indeed, we have discovered nowhere any instance where any board has ventured upon the adoption of such a rule. Such rating may gratify the constituency of a State Board. If upheld now, the decision will greatly simplify the duties of State boards in the future, but the rule here laid down seems to us to be totally inconsistent with the ideas of equity and fair play heretofore exacted of all bodies entrusted with the delicate and difficult task of dealing with the property rights of others.

In *Lake Shore* v. *Smith*, 173 U. S. 695, 696, it was said that even admitting that the Michigan legislature might have reduced all passenger rates to two cents per mile, it had no right, a general rate of three cents per mile having been allowed, to reduce such rates in special cases to two cents by an enactment that was "discriminatory, exceptional and partial" in favor of "persons able and willing to purchase a quantity at one time."

The order of the Board must be taken as a whole, and if in any part of it it is unjust and without warrant, the whole

must fall. It is no answer to say, as the Florida court says, erroneously, as we shall hereafter show, that there is no proof that freights are "carried locally." No proof is needed. The Board has made an order that covers such carrying, and it is not to be presumed in favor of the validity of the order that it is nugatory. Shippers may hereafter, even if they have not heretofore done so, in good faith at any time offer such freight, or they may even offer it to *secure the penalties* accruing to them by section 12 of the Florida Railroad Commission act—where a railroad company refuses to comply with an order of the Railroad Commission.

The Commission made this unfair order. There was no reason why it should not have made it just and fair. As this court said in *Reagan* v. *Farmers' Loan & Trust Co.* 154 U. S.:

> "As we have seen it is not the function of the courts to establish a schedule of rates. It is not therefore in our power to establish a schedule or *rearrange* this. Our inquiry is limited to the effect of the tariff as a whole including therein the rates prescribed for all the several classes of goods [and we insert here "including the rates prescribed for every distance embraced in the schedule"] and the decree must either condemn or sustain this act of quasi legislation."

On page 188 of its opinion in the case of *Ames* v. *Union Pacific Ry.* (C. C.) 64 Fed. Rep. the court said:

> "If it would be unreasonable to reduce the total earnings of these roads 29½ per cent it is, *prima facie*, at least unreasonable to so reduce any single fractional part of such earnings."

This *prima facie* case against the order shifts the burden on to the Florida Board.

The Supreme Court of Florida saw this difficulty and disposed of it by saying:

> "There is no showing that phosphate is *carried locally*, nor what may be charged for shipping the commodity in interstate commerce.

The court seems to have overlooked the proof on page 95 of the record, that during the preceding year the appellant hauled from points in Florida to points in Florida 295,107 tons of phosphate. To justify the sweeping order before it, the Florida court, if it had had these freights in mind, would have been obliged to assume without proof that in all this vast amount of intrastate freight there had been no short hauls in the previous year and would be none in future, *notwithstanding the inducements held out to shippers by this extraordinary order of the Commissioners.*

In Mississippi the State Railroad Commission sought to compel a telegraph company to keep open a particular office as part of a system, but the Supreme Court of that State held that the company could not be compelled to do business at a loss even in that one little office.

W. U. Tel. Co. v. *Railroad Commission*, 74 Miss. 80.

Capitalization, Mileage, Operation, etc.

The testimony in this case consists entirely of the report made by the plaintiff-in-error, the Seaboard Air Line Railway Company, to the Florida Railroad Commission, for the fiscal year ending June 30, 1904, and the seventh annual report of the Florida Commission. These two reports were submitted by the appellant as evidence and were specifically named as the evidence on which the case was to be tried by order of the court, record in 156, p. 31. A similar order was made in the other case, record, p. 41. There are also in the pleadings the two orders of the Florida Railroad Commission, one, that herein complained of reducing the rates on phosphates

in the State of Florida to the rate of one cent per ton per mile for all distances; and the other, the order of the Florida Railroad Commission above referred to making reductions on the merchandise therein mentioned.

The annual report of the plaintiff-in-error was made as called for under sections 10 and 20 of the Florida Railroad Commission law of 1899. It is full and complete, showing in detail—mileage of the whole system, 2,610.97 miles; mileage in Florida, 760.32 miles; capitalization, funded indebtedness, stock, preferred and common; expenses of operation; gross and net earnings, as to the whole system and as to Florida specially, as well as every other possible detail that might in the judgment of the Florida Railroad Commission enable it to determine upon proper rates; and all these statements are made with such particularity of detail, we insist, as to enable this court to decide the questions put in issue by our assignments of error.

The following extracts from this report are material:

Capital stock. (Page 50, Record.)

Number of shares authorized.	Par value of shares.	Total par value authorized.	Dividends declared during year.
Common 375,000	$100 00	$37,500,000 00	
Preferred . . . 250,000	100 00	25,000,000 00	None
Total 625,000	$100 00	$62,500,000 00	None

Number of shares of stock issued for construction .	2,000
" " " for acquiring securities of proprietary companies	623,000
Total number issued	625,000

Recapitulation of funded debt. (Page 54, Record.)

Class of Debt.	Amount Issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds (page 51, R.) . .	$65,493,000 00	$43,075,000 00	$1,994,733 33	$1,994,733 33
Miscellaneous obligations (p. 51, R.)	15,000,000 00	15,000,000 00	552,083 33	500,000 00
Income bonds (p. 51, R.)				
Equipment trust obligations (p. 51, R.)	6,380,738 80	3,442,347 89	136,632 29	135,210 07
Total . . .	$86.873,738 80	$61,517,347 89	$2,683,448 95	$2,629,943 40

Recapitulation for mileage operated by road making this report, the operations of which are included in the income account. (Page 55, Record.)

Name of road.	Capital stock.	Funded Debt.	Total.	Amount per mile of line.	
				Miles.	Amount.
Seaboard Air Line Ry.					
Grand Total	$62,500,000 00	$61,517,347 89	$124,017,347 89	2,607.97	$47,553 21

Cost of road, equipment, and permanent improvements—totals. (Page 57, Record.)

		Cost per mile.
Total cost equipment to June 30, 1904 (page 57, R.)	$7,443,639 88	$2,914 22
Total cost construction to June 30, 1904 (page 56, R.)	46,303,984 67	18,323 96
Grand total cost construction, equipment, etc., to June 30, 1904 . . .	$54,247,624 55	$21,238 18
Grand total cost construction, equipment, etc., to June 30, 1904, State of Florida	$15,666,713 97	$20,605 42

Income account (for roads making operating reports). (Page 59, Record.)

Total income (whole line)	$3,678,654 26
Total deductions from income	3,384,359 62
Net income	$294,294 64

Earnings from operation, State of Florida. (Page 61, Record.)

Total passenger earnings	$839,229 34
Total freight earnings	1,960,731 86
Total passenger and freight earnings	$2,799,961 20
Total other earnings	46,843 87
Total gross earnings from operation, State of Florida	$2,846,805 07

Operating expenses, State of Florida. (Page 66, Record.)

Maintenance of way and structures	$427,850 16
Maintenance of equipment	418,122 10
Conducting transportation	1,386,641 18
Gefleral expenses	142,513 14
Total operating expenses, State of Florida	$2,375,126 58

Total gross earnings from operation, State of Florida	$2,846,805 07
Total operating expenses, State of Florida	2,375,126 58
Surplus	$471,678 49
Taxes for the year on the railroad property in Florida (page 78, R.)	125,594 56
Surplus	$346,083 93
*The Florida road's part of the accrued interest on the funded debt, apportioned by size and cost of construction of the Florida road to that of the whole line	$774,701 81
Deficit for year	$430,636 88

*This statement is not from the report but is a deduction of our own and is hereafter explained.

This official report is uncontradicted. Every statement in it therefore stands before the court not only for what it states but for every inference to be legitimately drawn therefrom. There is no evidence offered to suggest that the construction of the road did not cost every cent as claimed, or that it is not worth the sum at which it is capitalized. Altogether the Seaboard Air Line Railway constitutes a great system extending with many branches through Virginia, North Carolina, South Carolina, Alabama and Florida. Its present funded debt amounts in round numbers to some $61,000,000 besides its stock; whereas its total cost of construction is given in round numbers at some $7,000,000 less—$54,000,000. But this is by no means proof of overcapitalization. The fair conclusion is, there being no evidence to the contrary, that the system as a whole is worth not only the amount it actually cost in dollars and cents to construct and equip it, but the amount it cost its owners and at which it was capitalized; because, like other great systems of railways, it was extended into an undeveloped country and over desirable lines, upon the credit of the company, the company utilizing its credit by raising money on its *bonds*, which money was used in buying and building connecting roads, in operating them for a considerable period of time, during which they did not and could not be expected to pay interest on the money invested, the enterprising managers of thesystem in the mean while counting on the future development of the country for a return of their investments.

On this point we call particular attention to the following reasoning of Judge McCormick in the case of the *Met. Trust Co.* v. *The Houston & T. C. R. Co.* 90 Fed. Rep. 168. It will be observed that in this Texas case the question was as to the proper valuation to be placed upon the property of the road whose case was before the court. In

that case there was a very wide difference between the proof offered by the railroad company on the one hand and the Railroad Commission of Texas on the other. The railroad authorities valued their road at $62,000 per mile. The Railroad Commission valued it at $21,000 per mile. Here was a positive conflict, and the difference between the witnesses was $41,000 per mile. If the Florida Railroad Commission had offered any testimony in this case showing, or tending to show, that the Seaboard Air Line Railway Co. was over-capitalized, that its property, considering its present and prospective value, was less than its capitalization, this case and the case before Judge McCormick would be precisely on all-fours with each other.

But the Florida Commission has offered no evidence whatever; so that our figures stand for all they are worth, and therefore when we apply the principles so ably laid down by Judge McCormick to the testimony before the court, the finding must be that the Seaboard Air Line Railway is not over-capitalized.

This is what Judge McCormick says in the above cited case:

> "The bill in this case avers that the defendant company and its predecessor company have necessarily expended in cost in the construction and equipment and betterment of the lines on the defendant company about $62,000 per mile of its said railways; * * * The valuation placed upon the property of this railroad corporation by the Railroad Commission of Texas, is, in round numbers, $21,000 per mile. This statement shows the vast difference between the estimates made by and on behalf of the railroad company and the estimates made by the Railroad Commission of the value of the railroad's property on which it is entitled to earn some profit. It seems to be clear from the answer of the Commission, the tone of the affidavits which it offers in support of its answer, and the argument of the attorney-gen-

eral and the assistant attorney-general who represented it on the hearing, that in estimating the value of this railroad property no allowance was made for the favorable location of the same, in view of the advance in prosperity of the country through which it runs, and the increment to its value due to the setling, seasoning, and permanent establishment of the railways, and to the established business and good will connected with its business, which has been established through a long series of years, and all of which ought reasonably to be considered in fixing the value of the property and the capitalization upon which at least it is entitled to earn, and should pay some returns by way of interest or dividends. * * * In countries conditioned as Texas has been and is, such a railroad property and business can not be reproduced, except substantially in the same manner in which this has been produced; that is, by a judicious selection of location, by small beginnings and gradual advance through a number of years, more or less of unproductive growth. * * * It is therefore not only impracticable, but impossible to reproduce this road, in any just sense, or according to any fair definition of those terms. And a system of rates and charges that looks to a valuation fixed on so narrow a basis as that shown to have been adopted by the Commission, and so fixed as to return only a fair profit upon that valuation, and which permits no account for betterments made necessary by the growth of trade, seems to me to come clearly within the provisions of the fourteenth amendment to the Constitution of the United States, which forbids that a State shall deprive any person of property without due process of law, or deny any person within its jurisdiction the equal protection of the laws. It is true that railroad property may be so improvidently located, or so improvidently constructed and operated, that reasonable rates for carriage of freights and passengers will not produce any profit on the investment. It is also true that many railroads not improvidently located, and not im-

providently constructed, and not improvidently operated may not be able, while charging reasonable rates for carriage of freight to earn even the necessary running expenses, including necessary repairs and replacements. And there are others, or may be others, thus constructed and conducted, which, while able to earn operating expenses, are not able to earn any appreciable amount of interest or dividends for a considerable time after the opening of the roads for business. This is true now of some of the roads, parties to these bills. At one time or another, and for longer or shorter times, it has been true, doubtless, of each of the roads that are parties to these bills. Promoters and proprietors of roads have looked to the future, as they had a right to do, and as they were induced to do by the solicitation of the various communities through which they run, and by various encouragements offered by the State. The Commission, in estimating the value of these roads, say that they included interest on the money invested during the period of construction. This is somewhat vague, but the "period of construction" mentioned is probably limited to the time when each section of the road was opened to the public for business * * * The estimate made on behalf of the railroad in this case of the cost to that company and to its predecessor company of the railroad property, and the business of that company as it exists to-day, may not be exactly accurate—clearly is not exactly accurate; but it seems to me that it is not beyond the fair value of the property, as it is shown to have been built up and constituted, and to exist to-day as a going business concern, and that such rates of fare for the carriage of persons and property as are reasonable, considered with reference to the cost of the carriage and the value of the carriage to the one for whom the service is rendered, can not be reduced by the force of State law to such a scale as would appropriate the value of this property in any measure to the use of the public without just compensation to the owners thereof, and would deprive the owners

thereof of the equal protection of the law guaranteed by the Constitution of the United States, as cited."

In estimating the value of the property on which a railroad company is entitled to earn a return from tariff rates, the following authorities show that the cost of bare physical reproduction is too narrow a basis:

Milwaukee Electric R. & Light Co. v. *Milwaukee*, 87 Fed. Rep. 585.
Ames v. *Union P. R. Co.* 64 Fed. Rep. 165.
Smyth v. *Ames*, 169 U. S. 547.
Chicago, B. & Q. R. Co. v. *Dey*, 38 Fed Rep. 656.

The following authorities are cited to show that railway companies should be allowed to earn something by way of dividends in addition to paying operating and maintaining expenses, interest on outstanding bonds, and taxes:

Chicago & N. W. R. Co. v. *Dey*, 35 Fed. Rep. 866.
Reagan v. *Farmers Loan & Trust Co.* 154 U. S. 362.
Milwaukee Electric R. & Light Co. v. *Milwaukee*, 87 Fed. Rep. 577.
Louisville & N. R. Co. v. *Brown*, 123 Fed. Rep. 951.
Ames v. *Union P. R. Co.* 64 Fed. Rep. 165.
Smyth v. *Ames*, 169 U. S. 547.
Southern Pac. Co. v. *Railroad Comrs.* 78 Fed Rep. 236.

Mr. Justice Brewer, delivering the opinion in *Chicago & N. W. Ry. Co.* v. *Dey*, *supra*, says:

"But where the rates prescribed will not pay some compensation to the owners, then it is the duty of the courts to interfere, and protect the companies from such rates. Compensation implies three things: Payment of cost of service, interest on bonds, and then some dividend. Cost of service implies skilled labor, the best appliances, keeping of the road-bed

and the cars and machinery and other appliances in perfect order and repair. The obligation of the carrier to the passenger and the shipper requires all these. They are not matters which the carriers can dispense with, or matters whose cost can by them be fixed. They may not employ poor engineers, whose wages would be low, but must employ competent engineers and pay the price needed to obtain them. The same rule obtains as to engines, machinery, road-bed, etc., and it may be doubted whether even the legislature, with all its power, is competent to relieve railroad companies, whose means of transportation are attended with so much danger, from the full performance of this obligation to the public. The fixed charges are the interest on the bonds. This must be paid, for otherwise foreclosure would follow, and the interest of the mortgagor swept out of existence. The property of the stockholders can not be destroyed any more than the property of the bondholders. Each has a fixed and vested interest, which can not be taken away. I know that often the stockholder and the bondholder are regarded and spoken of as having but a single interest; but the law recognizes a clear distinction. A mortgage on a railroad creates the same rights in mortgagor and mortgagee as a mortgage on my homestead. The legislature can not destroy my property in my homestead simply because it is mortgaged, neither can it destroy the stockholders' property because the railroad is mortgaged. It can not interfere with a contract between the company mortgagor and the mortgagee or reduce the stipulated rate of interest, and so, unless that stipulated interest is paid, foreclosure of course follows, and the mortgagors' rights, the property of the stockholders, are swept away. Whatever individuals may do by private contract to modify existing rates of interest, the legislature has no compulsory power in the matter. While, by reducing the rates, the value of the stockholders' property may be reduced, in that less dividends are possible,—and that power of the legislature over

> property is conceded,—yet, if the rates are so reduced that no dividends are possible, and especially if they are such that the interest on the mortgage debt is not earned, then the enforcement of the rates means either confiscation, or compelling, in the language of the Supreme Court, the corporation to carry persons or property without reward."

In *Southern Pac. Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep. 263, Mr. Justice McKenna says:

> "Interest on bonded debt is held by all authorities to be a proper charge upon income," etc.

In the case of the *Milwaukee Electric Railway & Light Company* v. *The City of Milwaukee*, 87 Fed. Rep. 577, the syllabus is:

> "An ordinance requiring a street railroad charging 5 cent fares to sell six tickets for 25 cents, or 25 tickets for $1, is unreasonable, when the road is only making yearly net earnings of 3.3 per cent to 4.5 per cent on its *bona fide* investment, and paying 5 per cent interest on its bonds in a city where the current rate of interest on first mortgage real estate security is six per cent. Such an ordinance is void, under the fourteenth amendment, as depriving the company of its property without due process of law."

In his opinion, page 585 of the case, District Judge Seaman said:

> "I am satisfied that the property of complainant represents a value, based solely upon the cost of reproduction, exceeding $5,000,000. ($5,153,287.76, being the amount which witnesses for the railway stated as the reproduction value of the railway.) And I am further satisfied that this amount is not the true measure of the value of the investment in the enterprise. It leaves out of consideration any allowance for necessary and reasonable investment in purchase of the old lines and equipments, which

were indispensible to the contemplated improvement, but of which a large part was of such nature that it does not count in the final inventory. * * * Of the $5,000,000 and over paid for the acquisition of the old lines it would be difficult, if not impossible, from the testimony, to arrive at any fair approximation of the share or amount of tangible property which enters into the valuation in this inventory. It does appear that the roadways required reconstruction with new rails and paving, and that the amount stated was actually paid by the investors, making their investment nearly $9,000,000. How much of this may be defined or apportioned as the amount which was both 'really and necessarily invested in the enterprise' I have not attempted to ascertain, except to this extent: that I am clearly of opinion that at least $2,000,000 of those preliminary expenditures are entitled to equitable consideration, as so invested, beyond the reproduction value, if the valuation of the investment is not otherwise found sufficient for all the purposes of this case, but no opinion is expressed in reference to the remaining $1,885,644."

In the case of the *Southern Pacific Co.* v. *The Board of Railroad Commissionars*, Federal Reporter, Vol. 78, Mr. Justice McKenna, delivering the opinion of the court, on page 203, after having shown that there was a "deficit for 1895 from the operation of the roads entirely in California of $552,896.51," says:

> "From this showing it is perfectly evident that there should be *no reduction of rates* of the Southern Pacific Company either regarding the Pacific Company or the California roads unless its business increase."

That is our precise contention here. We insist that the Florida Railroad Commission had no right to make any material reduction in our rates when it had before it appellant's actual condition. That condition it must have known,

as the law of Florida has required reports since 1899 like the report in evidence for the year ending July 1, 1904, and this report shows, as we have demonstrated, that upon a reasonable computation there was, when the earnings of the road in Florida were applied to the extinguishment of its fair share of the interest on the road's bonded debt, a deficit of $430,636.88. And yet so heedless was the Commission of the rights of appellant that it not only issued the phosphate order, the injustice of which we have complained, on December 17, 1903, but five days afterwards, December 22, it issued another order which had been under consideration since the 17th day of November, making a general reduction on rates of merchandise of which it said in its report, see page 82 Rec.:

> "The reduction in merchandise rates, while it may seem small when considered in relation to any one article, yet when we consider that it affects every article of clothing, every article of household furniture, and everything that we eat, it can be readily seen what a saving it will be in the aggregate to the people of Florida in the course of the year."

When the court considers that this order last cited is now in effect and that it is an additional and large reduction, we submit that it is clear that the enforcement or any further reduction would be depriving us of our property against the provisions of the fourteenth amendment.

The court will here note that the Commission is careful to explain that while the reduction "may seem small" yet, that for reasons given, it really amounts to a large sum; and that the Commission was right in this the court will see for itself from the following extract from the report:

> "In our last annual report we stated in detail the steps that were taken by the Commission in order-

ing into effect a reduction on merchandise rates, to be operated by the Seaboard Air Line and Atlantic Coast Line railroads. The Commission's order required that this rate should become effective July 1, 1904. *At the appointed time the railroads put the rate into operation.*

"This reduction affected a large part of all the freights hauled by the Seaboard Air Line and Atlantic Coast Line railroads in Florida. For distances of 150 miles and over 140 miles the reduction on such articles as shoes, books, medicines, not otherwise specified, and mowing machines was 10 cents per 100 pounds. On bedsteads and bureaus, 7 cents per 100 pounds; on corn mills and cane mills, hoes and plow handles, 3 cents per 100 pounds; on brick in less than carload quantities 8 cents per 100 pounds, and on lumber in less than carload quantities, 4 cents per 100 pounds; on bacon and hams packed in wood, 1 cent per 100 pounds; on flour 4 cents per barrel; on household goods and live stock, $3.00 per carload.

"The above is given to show how the reduction affects a few staple articles for a certain distance. The reduction is about the same for all distances between points on the lines of the above named railroads, *and affects practically all articles in less than carload quantities*, and a few in carload quantities."

Interest on Funded Debt—How Related to Earnings in Florida.

Before undertaking to discuss the opinion of the court below which totally omitted all considerations of indebtedness we shall insist under the authorities quoted that no calculations can be made about dividends until interest charges are all provided for. The total gross earnings from operation in the State of Florida for the year ending June 30, 1904, were $2,846,805.07 (page 61, Rec.), and the total operating expenses, in which were included the maintenance of way and structures, maintenance of

equipment, and conducting transportation, for the same period were $2,375,126.58. This leaves the earnings of the road in Florida $469,678.49, from which deduct taxes in Florida, $125,594.56, making the earnings $344,064.93, the whole of which was, if needed, applicable primarily to the payment of the yearly interest on the funded debt. To apportion this debt between Florida and the remainder of the system no plan seems so fair as apportionment according to the relative cost of the road in Florida and of the remainder of the road.

The total cost of construction, equipment, etc., of the whole system, is given at $54,247,624.55; the aggregate cost of the road in Florida is $15,666,713.97. That is to say, the value of the road in Florida, cost of construction alone considered, is 28.87 per cent of the whole. The interest on the funded debt, for which debt the whole of the road is bonded, is $2,683,448.95. The road in Florida must in equity have paid its share of that interest on the funded debt, which is 28.87 per cent. of $2,683,448.95, or $774,701.81. If we set over this last amount against the earnings in Florida, $344,064.93, we find that the Florida business fails to pay its share of the interest on the funded debt, the result being a deficit for the year of $430,636.88. And this does not take into account certain minor expenses deducted from the income of the whole road (page 59, rec.), amounting to $118,010.78, which was not apportioned as to States.

In calling attention to the bonded indebtedness which covers the whole Seaboard Air Line system and for which all the income of the road is bound, both interstate and intrastate, we are not unmindful of the principle laid down in *Smyth* v. *Ames*, 169 U. S. 541:

> "In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and

> property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business."

We have already quoted authorities showing that a railroad company must be allowed to earn annual interest on its reasonable indebtedness and we have quoted the testimony showing that very nearly all appellant's total income, which is the aggregate of all its interstate and intrastate commerce, is required to pay this annual interest. This being true, it is impossible to avoid the conclusion that some portion of the intrastate commerce of Florida must be applied to the payment of this aggregate indebtedness. The Florida Commission can not say that the intrastate commerce of either Georgia, Alabama, North Carolina, South Carolina, or Virginia shall bear more than its proportionate share. Neither can it say that the interstate commerce of the whole road shall bear the whole burden, or shall bear more than its share. The principle laid down in *Smyth* v. *Ames*, which we have quoted, would forbid any such contention. Nevertheless, the debt must be paid, and the whole, or if that be not necessary then some part of the gains from the intrastate commerce of Florida must go to the satisfaction of the aggregate debt for which the whole system is bound. There might arise some difficulty in apportioning to the intrastate commerce of Florida its fair share of this debt if the earnings of the whole system were sufficient to leave a large surplus. In that case an ingenious argument might be made perhaps

on behalf of the Florida authorities to the effect that the earnings from interstate commerce should bear the whole burden of the debt. But we are saved the necessity of answering any such plea as this because the annual interest on the bonded debt of the system absorbs practically the aggregate of all the earnings of the road *on its State and intrastate commerce. To pay this debt all the earnings of the system from all sources are absorbed save the relatively pitiful sum of $294,000.* The demand of this debt is inexorable. It must be paid. And when it is paid there is left for adjustment and apportionment by the authorities of six different States and the Interstate Commerce Commission at Washington, only this $294,000 surplus over debts, which, if it were divided equally between all the seven parties to the dispute, would give only some $40,000 to each. These considerations justify us in saying, we think, that when the Florida Railroad Commission was fixing intrastate freight rates it should at least have considered that even if the creditors of the Seaboard Air Line Railroad Company were not entitled to insist that the domestic commerce of Florida should yield to them in satisfaction of their debt the whole of the $774,000 which we have apportioned to them in our previous calculation, they were nevertheless entitled to insist that before calculating what *dividends* it would yield to stockholders, the Florida authorities ought to have remembered that the share of the debt due from the road in Florida was far more than the $346,000 it earned.

In other words, what we insist on is that as the funded debt which binds the whole road absorbs practically all its earnings, and as this debt must be paid, and as the earnings in Florida are very much less than the share that would be apportioned to Florida according to cost of construction, the fair conclusion must be that after the payment by the Florida road of its share of the bonded

debt interest there would not be a dollar left over. On the contrary there would be left a considerable deficit. The fact of this deficit might not be sufficient to show that rates in Florida were actually lower than in other States, but what the calculation does show beyond all doubt is that the operation of the road in Florida is not as profitable to the company, mile per mile, as is the operation of the road in other States.

Again, however, suppose the bonded indebtedness of the road be left entirely out of consideration. The earnings of the road in Florida even then would only pay some 2.2 per cent on the cost of construction. These are the figures:

Total gross e...nings from operation State of Florida (page 61, rec. 156)	$2,846,805.07
Total operating expenses, State of Florida (page 66, rec. 156)	2,375,126.58
	$471,678.49
Taxes on railroad property in State of Florida (page 78, rec. 156)	125,594.56
Earnings in Florida	$346,083.93
Total cost of construction, equipment, etc., road in Florida	$15,666,713.97

The Supreme Court of Florida, leaving out of consideration entirely the bonded indebtedness, which was in evidence before it, calculated that the net earnings on the total cost of construction, equipment, etc., was 3½ per cent. We fail to see how it could reach that conclusion, unless it omitted from its calculation the $125,000 of Florida taxes (see page 78, rec.) and which should be deducted from what the court called net earnings. This would bring the calculation down to 2.2 per cent, bonded indebtedness not being considered. This per cent will be further reduced in the future if the reductions made

by the orders in question in these two cases are sustained by this court.

Case No. 155.

In this case the order from which we appeal is found on pages 3 and 4 of the record. The enforcement of that order we resisted in the court below on two distinct grounds:

1. That the Florida West Shore Railroad was not operated by the Seaboard Air Line Railroad Company in such manner as, under the laws of Florida, would justify the Railroad Commission in treating the two railways as one under the Florida statute. This ground of objection, after careful examination, we have decided not to insist upon here.

2. The other ground on which we objected was the same as that upon which we are resisting the execution of the phosphate order, case 156, in so far as relates to the contention that by reducing our earning capacity it was depriving the appellant of its property without due process of law. The testimony on this point applying to these two cases is substantially the same. In both cases we submitted our annual report for the fiscal year ending June 30, 1904, and the seventh annual report on the Florida Commission; therefore all the testimony from these records heretofore pointed out and commented on in the one case and all the authorities not specially applicable to the straight rates on phosphates apply with full force in the other case. Capitalization, mileage, operation and income intrastate and total, insufficiency of revenue to pay dividends, all are fully set forth.

The order reducing freight tariffs in this case is found ou pages 8 and 9 of record 155. No proof was offered to show that this particular order was justifiable because these particular freights were unreasonably high. Just

at this point, however, we encounter the presumption which, according to the statutes of Florida and perhaps according to common usage generally arises in favor of the reasonableness of rates fixed by Commissioners. This presumption, though it exists, is always rebuttable and never conclusive. In the case of the *Southern Pacific Company* v. *The Board of Railroad Commissioners*, 78 Fed. Rep. 236, Mr. Justice McKenna held that the provision of the Constitution of California making rates fixed by its Railroad Commission conclusively just and reasonable is in conflict with the fourteenth amendment to the Constitution of the United States, and void.

Lawson, in his work on Presumptive Evidence, states as rule 120:

> "A rebuttable presumption of law being contested by proof of facts showing otherwise, *which are denied*, the presumption loses its value, *unless the evidence is equal on both sides*, in which case it should turn the scale."

See also *Graves* v. *Coldwell*, 90 Ill. 615.

Now we think we have established (1) that the appellant's property was not earning sufficient revenue to enable it to pay any dividends whatever to its stockholders. (2) That the stockholders are entitled to some dividends if they can be fairly earned. And having established these two points the burden of proof is shifted to the shoulders of the Florida Commission. If they had reduced only freights on a few articles the presumption might still be with them, viz: that they had found these items too high. But where they have made what amounts to a general reduction, even though it applies to a part of our territory, we insist that we have fairly met them and shifted the burden of proof by showing that our rates are as a general rule so low that we are paying nothing to our stockholders. It will be seen by the pleadings that the reasonableness of

the reductions made was directly in issue. Under the rule of law as above laid down we admit that the reductions made by the Commission will stand unless the proof taken altogether preponderates in our favor.

To consider that evidence and weigh it. The reductions made in this case are shown by the local mileage tariff adopted on the 25th of June, 1903, by the Commission and set forth at length attached to page 3 of the record, the bottom of the page (mileage tariff), being marked 23. This prescribes a tariff for distances varying from 10 to 400 miles, per 100 pounds, per barrel, per ton and per carload on classes which would seem to cover all kinds of freight, though we have no key to it. The table is comprehensive and the mileage extends all over the State. Exactly how great the reduction is it makes, we do not know, but that it was a reduction and a material reduction is clear from the fact that it was made as such and resisted as such and that the appellant is still refusing to obey said order on this ground. From the recitals in the pleadings in paragraph 8, beginning at the bottom of page 15 in this record, it appears that the West Shore Railway is about 60 miles in length. This little road is the starting and the ending point of the reduction—nothing more. The schedule fixes rates from and to all points on this 60 miles of railway to and from the boundaries of the State, 400 miles and over. This necessarily materially affects transportation over all other parts of appellant's system in Florida on freights emanating from or destined to this little road. It would cover freights that traveled only one mile on the West Shore Railway and over 400 miles on the other parts of the roads of appellant's system in Florida; and this order is simply a part of a system of wholesale reductions made by the Florida Commission on the domestic traffic of appellant in Florida. On page 95 of this record the Commission

reports the issuance, in November, 1903, of their order No. 35, amending rule 19, fixing rates on freights passing over the whole of two or more roads not under the same control, and of this order the Commission says, page 96, record:

> "This reduction will amount to a large saving in freight charges to the people of the State."

On the same page the Commission states,

> "the raising of interstate rates has been general over the United States."

This no doubt results from an increase of wages which applies everywhere, but the Commission adds, as to Florida,

> "Local rates have not been raised, and in many instances during the past year have been materially reduced."

All these facts, we insist, show that the Florida Commission, by making the sweeping order establishing the local mileage tariff complained of in this case, has deprived the appellant, whose rates were already insufficient to pay any dividends to its owners, of its property under the Constitution of the United States.

In the opinion of the court below on page 34 of the record it is said:

> "The original return goes farther and includes with the cost of construction and maintenance the payment of fixed charges, which counsel admitted in argument means taxes and interest on outstanding bonds. The vice in this method of pleading lies in the fact that the question of reasonableness is made to depend upon the capacity of the rates to yield a net income over and above the cost of constructing and maintaining the road and the payment of fixed charges, whereas circumstances *may exist* [italics ours]

> under which rates are reasonable which do not afford a net income above the cost of operation and taxes, or the cost of operation, taxes and fixed charges."

Here the court contents itself with answering the claim that the owners of appellant's property are entitled to some return therefor by saying that

> "circumstances *may exist* under which rates are reasonable which do not afford a net income over the cost of operation and taxes, or the cost of operation, taxes and fixed charges."

But the court nowhere undertakes to show that such circumstances do exist in this case. The testimony before the court authorized, as we have endeavored to show in a previous part of this brief, no inference whatever that any such argument was applicable here. Appellant's road is capitalized at $47,553 per mile (page 55, rec.). This includes sixty-two and a half millions of stock. In the Texas case from which we quoted the opinion of Judge McCormick, the court found that the road in that case, built and operated very much as ours was and is, was reasonably worth some *sixty thousand dollars per mile*, and this in a case where the Texas Railroad Commissioners offered evidence tending to show that their valuation of $21,000 per mile was correct. In our case, without any proof attacking our figures, we find the Florida court presuming, as the basis of its opinion, that our road may have been over-valued.

The court nowhere in its opinion undertook to say that there was anything in the circumstances of this little sixty miles of road operated by appellant or in the conditions surrounding it, or in the freights that had been previously charged on merchandise shipped to it, or from it that would justify the Commission in making the existence of such a road or appellant's connection with it the

basis of a general reduction in all freights all over the State that might happen to be directed to it or might emanate from it. We admit that the court, however, is not to be criticised for this omission because there was nothing in the testimony that would have justified any such comment by the court, and this for the very good reason that the Commission, which was a party to the case, had not offered any testimony whatever bearing on the point.

It is certainly carrying the presumption in favor of the action of the Commission a long way to say that because of the existence of such a little piece of road as this, which is less than one-twelfth of appellant's Florida system, the Florida Commission is presumably justified in making a sweeping wholesale reduction of freights that is applicable to the whole of the other eleven-twelfths of the system, provided these freights travel over ever so small a portion of the West Shore Railway. And we respectfully submit that the evidence we have before the court, which is all the evidence bearing on the case, is amply sufficient to justify us in contending that the order complained of is taking away our property without process of law and contrary to the provisions of the fourteenth amendment.

We further insist that the local mileage tariff in this case adopted on the 25th day of April, A. D. 1903, was not a necessary or proper measure, as it is claimed it was (see pp. 6, 7 and 8, Rec.), to prevent the violation of the statute of Florida, which enacts that connecting railroads under control of one and the same company shall be considered as constituting one and the same road, but that it was—

An arbitrary, partial and discriminatory reduction of tariff rates, applying not to the whole of appellant's system in Florida, but to a part thereof.

A simple order by the Florida Railroad Commission, to the effect that it had found that the Florida West Shore Railway, as controlled by the Seaboard Air Line Railway, constituted a part of said Seaboard Air Line Railway, and that the freight rates of the latter should be computed upon that basis, no higher rates being charged thereupon than upon lines connecting therewith for similar distances, or some other like order, would have carried out completely the intent of the Florida statute. Instead of such an order, a tariff was adopted effecting a complete and general change of tariff rates on freights pointing to or emanating from the Florida West Shore Railway. This tariff on its face has no reference to former rates. There is no limitation in this order 25 providing that the rates established thereby shall not be lower than similar rates on other like portions of appellant's road, and this for the reason that the new rates established were intended to be, and were, a reduction of rates on appellant's system, rather than a remedy for any violation of the Florida statute.

Conditioned as appellant's Florida system of railroads was at that time, the rates there being already so low as not to leave any dividend to the stockholders, appellant insists that the result of this tariff is to take away its property without due process of law.

The Opinion in Case 156.

The court below stated in its opinion, page 33, record:

> "The respondent further fails to meet the burden of showing that the rate prescribed together with the other rates in force deprive the respondent of a right guaranteed by the Constitution of the United States. It is impossible to ascertain from this showing what may be the operating expenses or the value of the road in Florida. There are given figures to show that the total cost of construction, equipment, etc., of

> the road in Florida has been about fifteen and a half million dollars, but nothing to show what the depreciation has been nor what the present value is. * * * It seems that the respondent in operating its line through several States has a scheme of distributing its incomes and expenses according to States, but this scheme is not made clear to us, nor has it so divided its domestic and foreign business that we can say that the net earning of only 3½ per cent on the total cost of construction, equipment, etc., is a confiscation of its property, or in any wise an infringement upon its constitutional rights."

It is difficult to see how the court arrived at the conclusions here stated from the evidence before it. The annual report of the appellant does show the actual cost of construction of the road in Florida, page 57, record; it does show the bonded indebtedness and the capitalization of the Seaboard Air Line Railway, page 54, record; it shows in itemized detail the earnings from operation of the road within the State of Florida for the year ending June 30, 1904, page 61, record; and the operating expenses within the State, pages 65 and 66, record. No evidence was offered to contradict these figures, and they must therefore stand as a basis for computing the compensatory quality of the rates. In *Ames* v. *Union Pac. Ry. Co.* 64 Fed. Rep. 165, Mr. Justice Brewer says:

> "It is not easy to always determine the value of railroad property, and *if there is no other testimony in respect thereto* than the amount of stock and bonds outstanding, or the construction account, it may be fairly assumed that one or other of these represents it, and computation as to the compensatory quality of rates may be based upon such amounts."

The report further shows that after deducting the operating expenses and the taxes of the road in Florida from the gross earnings from operation within the State, there

is left a surplus of about $346,000; and we have pointed out that, on a reasonable apportionment of the accrued interest on the funded debt, this surplus becomes a deficit of over $430,000. With these figure before it we do not see how the court reached a conclusion—

> "that the respondent fails to meet the burden of showing that the rate prescribed, together with the other rates in force, deprive the respondent of a right guaranteed by the Constitution of the United States."

Our report covers operations for the year ending July 1, 1904. On that day the schedule lowering freights on "all household furniture, all we eat and wear," etc., went into operation. This will further reduce our future receipts and this order had been made before this suit began. Certainly the proposed reduction in rates on phosphates, a commodity which constitutes 16.43 per cent of the total freight tonnage hauled within the State, establishes at least a prima-facie case of confiscation within the meaning of the fourteenth amendment.

And further, the court below goes on to state:

> "There are given figures to show that the actual cost of construction, equipment, etc., of the road in Florida has been about fifteen and a half million dollars, but nothing to show what the depreciation has been nor what the present value is."

To this we reply—first, that the law raises no presumption that a going road depreciates; and, secondly, that pp. 56 and 57 (Record, 256) show, in detail, large amounts expended during the year for betterments; and this is the only evidence bearing on the question.

The court below further says:

> "It seems that the respondent in operating its line through several States has a scheme of distributing its incomes and expenses according to States, but this

scheme is not made clear to us, nor has it so divided its domestic and foreign business that we can say that the net earning of only 3½ per cent on the total cost of construction, equipment, etc., is a confiscation of its property or in any wise an infringement upon its constitutional rights."

In just what manner the court figured out a net income of 3½ per cent on the total cost of construction, equipment, etc., we are unable to discover. Certainly not on the business of the whole road—for that shows a net income of only one-half of one per cent; and it could not have been on the business of the road in Florida, which is, as we have shown, totally insufficient to pay its share of interest on the bonded debt.

As to dividing its domestic business, this is done in the report in detail, exactly according to the forms which presumably were furnished by the Florida Commission, which had the right to prescribe forms, and it was accepted by the Commission, for it was under the order of the court, record p. 31, formally admitted in evidence as "the annual report of the Seaboard Air Line Railway *filed* with the Railroad Commission."

Respectfully submitted,

GEO. P. RANEY,
HERBERT & MICOU,
Attorneys for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SEABOARD AIR LINE RAILWAY, *Plaintiff in Error*, v. STATE OF FLORIDA, upon the relation of W. H. ELLIS, as Attorney-General, *et al.* *Defendant in Error.*	Nos. 155 and 156.

SUPPLEMENTAL BRIEF FOR APPELLANT.

By agreement of counsel on file, red letter page 68 in case 155 shows correctly on the bottom line of figures the "total cost construction, equipment, etc., State of Florida." The figures occupying that same space on page 57 of record 156 were put there by the mistake of a copyist. This agreement the court ordered us to print, but the Clerk of the Court subsequently informed us that the Chief-Justice said printing would be unnecessary and that we might simply call attention in the proper manner to the figures. The correct figures, and those which should be on the bottom line of figures on page 57, record 156, are as follows:

GRAND TOTAL COST CONSTRUCTION, EQUIPMENT, ETC., STATE OF FLORIDA.

Charged to Construction or Equipment.	Total Cost to June 30, 1905.	Total Cost to June 30, 1904.	Cost per Mile.
$406,964 12	$11,591,334 03	$15,666,713 97	$20,605 42

From this it appears that while the cost of construction per mile of the whole line of the Seaboard Air Line Railway is $21,238.18, the cost per mile of the road in Florida is $20,605.42, making a difference per mile of $632.76.

Mistakes of Counsel for Appellee.

The chief object of this brief is, by permission of the court, to correct what we claim were erroneous statements made by counsel for appellee in his oral argument.

1st. He insisted that the Seaboard Air Line Company had kept no separate account of its operations in Florida, claiming that the results set forth in the report were reached by dividing the accounts kept for the whole line according to mileage proportionately between Florida and the whole system. To show the error into which counsel fell, we call attention to the fact that, as is shown on page 46, the mileage for Florida is 753.99 miles and the mileage for the whole system (page 48) is 2,610.97 miles. Calculation shows that Florida's percentage of the total mileage is 28.87 per cent.

Now let us turn to page 74, Rec. and we find that the total passenger earnings of the entire system, item 8, are . . . . . $3,254,711.64.

If the Seaboard Air Line Railway obtained the passenger earnings from Florida by taking 28.87 per cent of the passenger earnings for the whole line, they would be $939,635.25.

Instead, they are, item 8, page 73, Rec. . $839,229.34.

Again on page 74, item 18, we find that the total freight earnings for the entire system are $9,269,138.72;
28.87 per cent of this would be . . . . . $2,665,000.34.
Instead, we find the total freight earnings in State of Florida to be, item 18, page 73, Rec. . . . . $1,960,731.86.

These figures show conclusively that appellant company did not determine earnings from operation within the State of Florida by dividing the accounts for the whole system according to mileage proportionately between Florida and the entire line.

Note again, that on page 72, Rec. employees and salaries in the State of Florida are itemized, including total number of days worked, total yearly compensation, and average daily compensation.

Note again, on page 73, Rec. (black letter 61*A*) our traffic and mileage statistics in the State of Florida; altogether, fifty separate items, each relating to the business in the State of Florida. On page 74 (black figures 61) are precisely the same fifty items for the whole system.

Some interesting differences appear in comparing these last two pages. For example:

Florida: Item 16, page 73, Average amount received for each ton of freight . . . . . $1.01336.
Whole line: Item 16, page 74, Rec. Average amount received for each ton of freight . . $1.76802.
Florida: Item 17, page 73. Average receipts per ton per mile . . . . . .00815.
Whole Line: Item 17, page 74. Average receipts per ton per mile . . . . . .01177.

Here we see that both these differences are in favor of the whole line as compared with the State of Florida. That is to say, these two items when compared with each

other show that in Florida freight rates are relatively cheaper than they are for the whole line. The whole line receives not only a greater sum for each ton of freight it handles, but it also receives a considerably larger sum per ton per mile.

The next error of counsel for the appellee was the statement we understood him to make, that appellant's report as to operations, etc., was only admitted in evidence for the purpose of showing that the company had complied with the law of Florida in filing it.

The Record shows, page 31, that the appellee produced and filed as evidence this report, as well as also the annual report of the Railroad Commission. There was no objection to it, and the reports were received and considered as evidence.

The order is as follows:

> "Supreme Court of Florida, June term, A. D. 1904.—The State of Florida, *ex Rel.* the Railroad Commissioners *et al.* Plaintiff, *v.* Seaboard Air Line Railway, Defendant.
>
> "This cause being at issue and being set for trial on this day, come now the parties by their counsel, and the defendant produces and files as evidence the annual report of the Seaboard Air Line Railway for the year ending June 30, 1904, filed with the Railroad Commission, and the seventh annual report of the Railroad Commission; and the plaintiff's counsel announcing that he would introduce no testimony, thereupon the case is continued for argument until to-morrow."

It is too late now to raise a point that appellant's books were not evidence. They were treated as such by the court, see its opinion, pp. 32–33, Rec. Case 156.

The opinion of the Florida Supreme Court upon the facts is *prima facie* correct; but this presumption in favor of its correctness is rebutted when we point out that the

court totally overlooked evidence which was before it. For example. In this opinion the court said, on page 32:

> "To questions asked by the Railroad Commission as to the expenses of fuel and other operating items, the respondent replied that it could not answer by States."

The mistake of the court appears from the fact that the court has already stated in this same opinion on page 32 as follows:

> "The only proof offered was the sworn report of the railway company to the Railroad Commission of Florida, for the year ending June 30, 1904. This report was admitted without objection."

The idea then in the mind of the court that "to questions asked by the Railroad Commission as to the expenses of fuel and other operating items the respondent replied that it could not answer by States," could only have come from the fact that, as stated by counsel in argument, this case was argued along with the Atlantic Coast Line Case No. 152, and the court must have had in mind here some questions asked by the Commission in that case.

On page 66 (red figures) of Case 156, among other operating expenses in the State of Florida is given the cost (near bottom of page) of "conducting transportation," which would include fuel.

Another error of counsel for appellee was the statement he made in reference to the showing of stocks owned on page 62 (red figures) and bonds owned, on page 63, Rec. 156. We understood him to argue that in some way or other these figures indicated excessive prices the appellant company had paid for its property. In point of fact the figures have no relation whatever to moneys or sums paid out by the appellant company, but, on the face of

the two pages, it is perfectly clear that the railway company was obeying the order of the Railway Commission and of the law of Florida, which provides in its Railroad Commission, 1899, Chapter 1700, No. 39, in its 10th section, subdivision 4, that railway companies shall in their statements give "the amount of assets and liabilities." Here it was giving a full account of all the property it owned, productive and unproductive. The two items at the top of page 62 show that the company has on hand of its own common stock $500,000, and of its preferred stock $11,000,000, and as to this stock, it was either never issued or if issued was bought back, and no dividends were declared upon it.

On only one item of the railroad stocks it owns did it receive any dividends during the year, and that was on the Richmond and West Line stock, where the dividend was $17,800. All the rest of its railroad stocks were unproductive, as were all of its other stocks lower down on the page, except one item, Old Dominion S. S. Co., upon which it received $12,600. The same is true of the bonds owned, on the next page. All its railroad bonds there were unproductive, except one item, those of the Florida West Shore Railway, upon which it received $9,875. So also of its other bonds on that same page. The company received as a dividend upon its bonds of the Florida Publishing Company $280. Much comment was made on this; but there can be no reason why a railroad company should not own one-third interest in a little publishing company returning a dividend of $280, which must be greatly less than the amount required to pay for the printing of the company in Florida. And the moneys received on this property were used of course to help in payments on bonded indebtedness hereafter alluded to.

Again, the court in its opinion totally overlooked the

most important item to be considered in deciding whether rates were confiscatory—to-wit, mortgage indebtedness. And here we call attention to the opinion of Justice Brewer (*Ames* v. *Union Pac. Ry. Co.* 64 Fed. Rep. 177) quoted on page 37 of our original brief, as follows:

> "It is not easy to always determine the value of railroad property, and *if there is no other testimony in respect thereto* than the amount of stock and bonds outstanding, or the construction account, it may be fairly assumed that one or other of these represents it, and computation as to the compensatory quality of rates may be based upon such amounts."

And the opinions of Justices Brewer and McKenna, cited on pages 21, 22 and 23, as follows:

> "While, by reducing the rates, the value of the stockholders' property may be reduced, in that less dividends are possible,—and that power of the legislature over property is conceded,—yet, if the rates are so reduced that no dividends are possible, and especially if they are such that the interest on the mortgage debt is not earned, then the enforcement of the rates means either confiscation, or compelling, in the language of the Supreme Court, the corporation to carry persons or property without reward."

In *Southern Pac. Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep. 263, Mr. Justice McKenna says:

> "Interest on bonded debt is held by all authorities to be a proper charge upon income," etc.
>
> "From this showing it is perfectly evident that there should be *no reduction of rates* of the Southern Pacific Company either regarding the Pacific Company or the California roads unless its business increase."

Our original brief discusses fully "Interest on the Funded Debt—How Related to Earnings in Florida," be-

ginning on page 25, and ending at the top of page 30. This discussion shows, as we think, clearly that if we are allowed to earn enough money by our rates to pay our mortgage indebtedness, the earnings in Florida are totally insufficient to pay the share of that mortgage debt properly allotted to Florida, no matter whether the item of $125,000 taxes in Florida be considered as assessable wholly on the road in Florida for the purposes of this case, or partly on the road in Florida only, or entirely on the road as a system, Florida being reckoned as not responsible for any share of it; and if this fact is established, then any lowering of rates on a material portion of our freight was confiscatory in its nature.

As to the contention of counsel that the order did not reduce rates on phosphates, we do not consider that this needs any reply. Such a contention involves the idea that the order is nugatory, and if it was, of course the Commission knew it and the railroad company also knew it when it appealed from the order.

In conclusion we venture to re-state our proposition as to the rates on phosphates and to call special attention to the *Lake Shore & M. S. R. Co.* v. *Smith*, 173 U. S. 684, L. E. 43, p. 858. In that case Justice Peckham delivering the opinion of the court said that although a corporation

> "is under government control, that control must be exercised with due regard to constitutional guaranties for the protection of its property,"

and later, speaking of the Michigan law allowing purchasers to buy 1,000 mile tickets for less than the standard rate, to be good for a certain period and to include the purchaser's family, he said:

> "This is not a reasonable regulation."

We do not propose that this court shall "substitute its

judgment for the judgment of the Florida Commission," nor do we contend that this court could correct even a very glaring error of judgment committed by the Commission in the exercise of its judgment. What we contend for is that the Florida Commission in regulating rates ought to have some regard for the rules that govern the cost of transportation and that that Commission can not lay down and proceed upon a rule that is arbitrary and has no relation whatever to the cost of transportation, and that it is unreasonable and arbitrary to fix a price at which a carrier shall be compelled to transport freight by adopting a method of rate fixing which leaves entirely out of consideration the question of cost. Our proposition is this: *A constitutional method of rate fixing only becomes unconstitutional when in its results it becomes confiscatory. This method is in itself confiscatory because it is purely arbitrary.* This court judicially knows (see opinion of Mr. Justice Brewer in *Chicago, M. & St. Paul R. Co.* v. *Tompkins*, 176 U. S. 168, cited on p. 7 of our brief) that a long haul should be cheaper than a short haul, and for the same reasons it knows that freights in car-load lots can be carried more cheaply than by the ton. In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, it was decided that an ordinance of the city of San Francisco was unconstitutional because it was arbitrary.

In the case of *Lockner* v. *New York*, 198 U. S. 45, this court decided that the ten-hour law of New York was

> "not a legitimate exercise of the police powers of the State but an *unreasonable, unnecessary and arbitrary interference* with the rights and liberty of the individual to contract, etc."

Mr. Justice Harlan in his dissenting opinion clearly indicated that he and the other members of the court agreeing with him would have decided in the same way if

in their opinion, the act had been unreasonable, unnecessary and arbitrary. The dissent was placed upon the ground that the minority of the court thought the act in question bore a

> "'real or substantial relation' to the protection of health as involved in the daily work of the persons, male and female, engaged in baking and confectionery establishments."

We do not think we could put this case more forcefully than by using the words of this opinion. The arbitrary method adopted by the Florida Commission in fixing the rates on phosphates, we insist, bore "no real or substantial relation" to the cost of the carrying they were requiring the railway company to do. So the question narrows itself down to this. Can a Commission, in performing the duty of fixing railroad freight rates on transportation, adopt a method that leaves the question of cost out of consideration? Is the power of a such a Commission unlimited and absolutely arbitrary? A Commission can compel a railroad company to have some of its trains stop every day at every station. Can it go farther and compel a railroad company to stop all of its passenger trains at all stations? If there is any limit to the power of a State Railway Commission, any line it can not cross, that line must be drawn where the action of a Commission becomes unreasonable and arbitrary.

If the court should reach the conclusion that such a regulation was unreasonable and arbitrary would there be any need to go farther in order to reach the conclusion that the regulation was unconstitutional? In such case, we insist that the case of *Lake Shore* v. *Smith* would be a precedent precisely in point. In that case, the court, having concluded that the act in question reducing certain fares to two cents per mile was

> " discriminatory, exceptional and partial legislation,"

decided that it was unconstitutional and refused expressly to consider the question as to whether a reduction of all passenger fares to two cents a mile would have been confiscatory. In other words, that act, on its face, was arbitrary and unconstitutional, just as we insist this method of fixing rates is, on its face, arbitrary and unconstitutional.

A method of fixing rates, a rule adopted for that purpose must be influenced by some motive which a Commission can properly entertain, and which is consistent with a due regard for the rights of the carrier with whose property it is dealing. If the rule has no regard whatever for these rights, has no relation to the costs to be incurred, then on its face it is a rule or method that takes away property *without due process of law, or without any assignable reason, which is the same thing.* The rule adopted here having on its face no regard for the difference between long hauls and short hauls, or for the difference between carrying car loads and tons, takes away property without due process of law. It is not only arbitrary, but it is *exceptional and unprecedented.* It stands here naked, and as such must be approved, or at least tolerated, by affirming the decree of the court below, or it must be disapproved by a reversal.

What was the "motif" of this rule? In our original brief we tried to guess. It seems that we were mistaken, as counsel says "phosphate" means "phosphate rock," which is not a fertilizer until it is reduced. After all the discussion can the court guess what was the reason, not for lowering the rates, but for the exceptional method resorted to? And further, if the *motive* for the *method* can not be surmised, is not the method arbitrary?

Respectfully submitted,

GEO. P. RANEY,
HILARY A. HERBERT,
BENJ. MICOU.

NOTE.—We have mailed a copy of this brief to counsel for appellee.

NOTE.—Section 30 of Article XVI of the Constitution of the State of Florida (see page 69, Revised Statutes Florida, 1892) is as follows:

> "The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

Seaboard Air Line Railway,
Plaintiff in Error,
vs.
The State of Florida upon the relation of W. H. Ellis, as Attorney General of said State, et al.
Defendant in Error.

No. 155.
Error to the Supreme Court of the State of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enfore a schedule of freight tariffs for freight shipments from points in Florida to points in Florida over the Seaboard Air Line Railway, to apply to shipments from or destined to points on the Florida West Shore Railway, and from points on the Florida West Shore Railway to points on the Florida West Shore Railway.

The Railroad Commissioners, in prescribing the rates as set up in Exhibit A. of the alternative writ of mandamus (pp. 8 and 9 of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case (p. 42 of the record) as put in issue by the fifth ~~annual~~ return, which return gives the nearest and the only semblance of a Federal queston, is based on the evidence taken before the Supreme Court of Florida on pp. 55 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first and second assignments of errors are based on the denial of the motion of the plaintiff in error to quash the alternative writ of mandamus. The motion was to the effect that the contract existing between the plaintiff in error and the Florida West Shore Railway, which is set up in the alternative writ (pp. 3 to 6 of the record), made the schedule of rates sought to be enforced inapplicable to the West Shore Railway. In denying the motion the court only construed

a rule adopted by the Railroad Commissioners in pursuance of Chapter 4700 of the Laws of Florida. The court's construction of that rule is final, since no Federal question is involved. If it were contended that the denial of the motion was based on a construction of the contract and not of the rule, this decision would be equally as final so far as this case is concerned.

Sayword v. Denny, 158 U. S. 180;
San Francisco v. Scott, 111 U. S. 768;
Rockhold v. Rockhold, 92 U. S. 129;
Leysen v. Davis, 170 U. S. 36;
Capital Nat. Bank v. Cadiz First Nat. Bank, 172 U. S. 425;
Wabash R. Co. v. Pearce, 192 U. S. 185.

SECOND.

The third, fourth, fifth and sixth assignments of errors are based solely on questions of procedure. They raise questions of State practice, which are concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

THIRD.

The seventh to thirteenth assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, in which the opinion filed in the State ex rel. Railroad Commission v. Atlantic Coast Line R. Co., 37 South. Rep. 314 is adopted as the opinion of the court in this case. The fourteenth is a blanket assignment which covers all the others.

No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion, and that finding is conclusive in this Court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

> The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

According to the decisions of this court, the plaintiff in error has not shown sufficient facts to reverse the judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

> Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;
> Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;
> Reagan v. Farmers Loan & T. Co., 154 U. S. 362;
> St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;
> Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;
> Smyth v. Ames, 169 U. S. 466;
> San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact of the Supreme Court of Florida, it would be found that the Seaboard Air Line Railway introduced in evidence to sustain its Plea or Return absolutely nothing even tending to sustain the same, confining itself to the introduction in evidence of two printed reports, the one being a report of that company filed with the Florida Railroad Commission for the year ending June 30th, 1904, and the other the report of the State Railroad Commission for the year ending March 1st, 1904. Neither of those reports have the slightest relevancy to the issue in the cause.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1905.

Seaboard Air Line Railway, Plaintiff in Error, vs. The State of Florida upon the relation of W. H. Ellis, as Attorney General of said State, et al. Defendant in Error.	No. 156. Error to the Supreme Court of the State of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enforce rates on phosphate from points in the State of Florida to points within the said State over all the lines of railway of the plaintiff in error wholly or in part within the State of Florida.

The Railroad Commissioners, in prescribing the rates as set up in Exhibits A. and B. (pp. 5 to 7, inclusive, of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case will be found on pp. 32 and 33, inclusive, of the record, which is based on the evidence taken before the Supreme Court of Florida, on p. 44 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first assignment of error is based on the overruling of the demurrer of the plaintiff in error to the alternative writ of mandamus. The opinion of the Supreme Court of Florida and the statement of the cause will be found on pp. 10 to 19, inclusive, of the record.

It is not deemed necessary to argue this point. This is a question of State practice which is concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

SECOND.

This court is precluded from reviewing the judgment of the Supreme Court of Florida on the second assignment of error. See cases cited above.

THIRD.

The third, fourth, fifth, sixth and seventh assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, which is contained in the record on pp. 32 and 33 The eighth is a blanket assignment which covers all the others. No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion and that finding is conclusive in this court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

See pp. 32, 33 of the record.

According to the decisions of this court, the plaintiff in error has not shown sufficient facts to reverse the

judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;

Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;

Reagan v. Farmers Loan & T. Co., 154 U. S. 362;

St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;

Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;

Smyth v. Ames, 169 U. S. 466;

San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact of the Supreme Court of Florida, it would be found that the Seaboard Air Line Railway introduced in evidence to sustain its Plea or Return absolutely nothing even tending to sustain the same, confining itself to the introduction in evidence of two printed reports, the one being a report of that company filed with the Florida Railroad Commission for the year ending June 30th, 1904, and the other the report of the State Railroad Commission for the year ending March 1st, 1904. Neither of those reports have the slightest relevancy to the issue in the cause.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.

Supreme Court of the United States.

Nos. 10 and 11.—October Term, 1906.

Seaboard Air Line Railway, Plaintiff in Error, *vs.* The State of Florida upon the Relation of W. H. Ellis, as Attorney General of said State, et al.	In error to the Supreme Court of the State of Florida.

[December 3, 1906.]

These cases resemble the one immediately preceding, in this, that review is sought in each of an award of a peremptory writ of mandamus by the Supreme Court of Florida to compel compliance with an order of the State railroad commission. In the first the court sustained an order of the commission, made June 25, 1903, and to go into effect July 1, 1903, prescribing rates on the Florida West Shore Railway, charged to be under the control and management of the plaintiff in error, 48 Florida, 129–152, the order being in these words: "It is hereby ordered and adjudged by the Railroad Commission of the State of Florida that the following schedule of freight tariffs shall be allowed and adopted for freight shipments over the Seaboard Air Line Railway, to apply only to shipments from or destined to points on the Florida West Shore Railway, and from points on the Florida West Shore Railway to points on the Florida West Shore Railway, and the same shall be put into operation and be effective on the 1st day of July, A. D. 1903," and followed by the schedule; and in the second, it enforced the order of the commission in respect to phosphates (which was noticed by us in the opinion in the preceding case). 48 Florida, 150.

The proceedings before the commission are not disclosed, nor is there anything to show upon what the orders were based. There was notice and a hearing. And in the pleadings in the first case appear the contracts between the plaintiff in error and the Florida West Shore Railway.

In the Supreme Court the relator presented no testimony, relying upon the statutory presumption which attends an order of the commission. The defendant introduced the report which it had made to the railroad commission for the year ending June 30, 1904, and the report of the railroad commission to the governor of the State for the year ending March 1, 1904, and upon these two reports the cases were considered by the Supreme Court.

Mr. Justice BREWER delivered the opinion of the Court.

There are no special findings of facts in these cases, and only from an examination of the opinions filed by the Supreme Court can we ascertain what its conclusions were or upon what its judgments were based. It may well be doubted whether a railroad company can rely, as evidence in its own behalf, upon a report made and filed by it, and while a report of the railroad commission to the governor may undoubtedly be used against it in an application made at its instance to secure compliance with one of its orders, yet there is little in its report which throws light upon the questions in these cases.

Referring to the first case, in which is presented the reasonableness of an order made by the commission respecting local rates for business on, to or from the Florida West Shore Railway, we find it stated in the brief of the plaintiff in error that the railroad commission on December 22, 1903, made an order, to go into effect July 1, 1904, reducing local freight rates generally; that from this order no appeal was taken; that in November, 1903, an order was made reducing by ten per cent rates on certain freights going over two or more roads, and that from such order no appeal was taken. These are the orders referred to in the report of the commission to the governor. But the order in controversy was made on June 25, 1903, to go into effect July 1, 1903, and is applicable solely to the Florida West Shore road. Now, whether this order of June 25, 1903, was simply operative to make the rates on the Florida West Shore road the same as those then obtaining generally in the State, or whether it made them higher or lower than such rates, does not appear. For some reason, not disclosed, the order touched only the local freight rates to and from the Florida West Shore Railway and over the Seaboard Air Line Railway. Even if the total receipts by the latter company from local freight rates were insufficient to meet what could properly be cast as a burden upon that business, such insufficiency would not justify it in an inequality of rates between different parts of the State, in one part too high and in the other too low. The State might properly insist that there should be equality in the rates—the conditions being the same—and if nothing more was accomplished by the order of the commission than to establish such equality we cannot hold that the judgment of the Supreme Court was erroneous.

With reference to the second of these cases, the order made by the railroad commission is said by the plaintiff in error to be an "irregular, unjust and unreliable method of rate fixing," and this upon the theory that the order makes the rate per mile the same for any distance, whether one mile or a hundred miles. It appears that 16.43 per cent of all the local freight business of the company in Florida comes from the

carrying of phosphates, and reference is made to several cases in which the courts have noticed the fact that the cost of moving local freight is greater than that of moving through freight, and the reasons for the difference. But evidently counsel misinterpret the order of the railroad commission. It does not fix the rate at one cent per ton per mile. It simply provides that it shall not exceed one cent per ton per mile, prescribes a maximum which may be reduced by the railway company, and if distance demands a reduction the company may and doubtless will make it. In addition it must be borne in mind that it is to be presumed that the railroad commission acted with full knowledge of the situation; that phosphates were in Florida possibly carried a long distance, the place of mining being far from the place of actual use or preparation for use. Further, when we turn to the report of the railroad company (which of course is evidence against it) we find that the company's average freight receipt per ton per mile in the State of Florida was $8\frac{15}{100}$ mills; so that the rate authorized for phosphates was nearly two mills per ton larger than such average. Under these circumstances it is impossible to say that there was error in the conclusions of the Supreme Court of the State, and its judgments are

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.